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Title 22

Criminal Offenses and Penalties
(Chapters 33 to End)

to

Title 24

Prisoners and Their Treatment

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V. David Zvenyach, *General Counsel*

John Hoellen, *Legislative Counsel*

Benjamin F. Bryant, Jr., *Codification Counsel*

Karen R. Barbour, *Legal Assistant*

*

PREFACE

These annual cumulative pocket parts update the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) in effect as of April 1, 2014.

This Supplement also updates the D.C. Code annotations by including notes taken from District of Columbia cases appearing in the following sources: Atlantic Reporter, 3d Series Supreme Court Reporter Federal Reporter, 3d Series Federal Supplement, 2d Series Bankruptcy Reporter.

Current legislation between pamphlets or pocket parts can be accessed online at www.lexisnexis.com/advance, www.lexisnexis.com/research, and http://dcclims1.dccouncil.us/lims.

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Later laws and annotations will be cumulated in subsequent annual Pocket Parts.

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§ 22-3301. Forcible entry and detainer.

Whoever shall forcibly enter upon any premises, or, having entered without force, shall unlawfully detain the same by force against any person previously in the peaceable possession of the same and claiming right thereto, shall be punished by imprisonment for not more than 1 year or a fine of not more than the amount set forth in § 22-3571.01, or both.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 851; June 11, 2013, D.C. Law 19-317, § 201(m), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than $100".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 201(m) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3302. Unlawful entry on property.

(a)(1) Any person who, without lawful authority, shall enter, or attempt to enter, any private dwelling, building, or other property, or part of such dwelling, building, or other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than the amount set forth in § 22-3571.01, imprisonment for not more than 180 days, or both. The presence of a person in any private dwelling, building, or other property that is otherwise vacant and boarded-up or otherwise secured in a manner that conveys that it is vacant and not to be entered, or displays a no trespassing sign, shall be prima facie evidence that any person found in such property has entered against the will of the person in legal possession of the property.

(2) For the purposes of this subsection, the term "private dwelling" includes a privately owned house, apartment, condominium, or any building used as living quarters, or cooperative or public housing, as defined in section 3(1) of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 654; 42 U.S.C. § 1437a(b)), the development or administration of which

is assisted by the Department of Housing and Urban Development, or housing that is owned, operated, or financially assisted by the District of Columbia Housing Authority.

(b) Any person who, without lawful authority, shall enter, or attempt to enter, any public building, or other property, or part of such building, or other property, against the will of the lawful occupant or of the person lawfully in charge thereof or his or her agent, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof or his or her agent, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than the amount set forth in § 22-3571.01, imprisonment for not more than 6 months, or both.

(Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 824; Mar. 4, 1935, 49 Stat. 37, ch. 23; July 17, 1952, 66 Stat. 766, ch. 941, § 1; Apr. 24, 2007, D.C. Law 16-306, § 219, 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 215, 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 201(h), 60 DCR 2064.)

Section references. — This section is referenced in § 23-581.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than $1,000" in (a)(1) and (b).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 201(h) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Double jeopardy.

Defendant's convictions for unlawful entry, D.C. Code § 22-3302 (2001), and criminal contempt, D.C. Code § 23-1329 (2001), did not pass the Blockburger test because the provision of the release order that defendant violated and that supported his contempt conviction was the provision that ordered him to stay away from the premises of 2301 11th Street, and thus, defendant violated his release order when he willfully did not stay away from the premises of 2301 11th Street. The barring notice prohibited defendant from entering the public housing complex, and thus, defendant committed the offense of unlawful entry when he entered 2301 11th Street, part of the public housing complex, in violation of the barring notice; therefore, because the violated provision of the order, not staying away from the public housing complex building at 2301 11th Street on September 22, 2010, did not require proof of an element that unlawful entry did not also require, defendant's unlawful entry conviction was a replication of the release-order violation and thus, defendant could not be punished for both under the Double Jeopardy Clause of the Fifth Amendment. Haye v. United States, 67 A.3d 1025, 2013 D.C. App. LEXIS 66 (2013).

Nature and elements of offense.

— Belief that entry is permitted, nature and elements of offense.

Police officers did not have probable cause to arrest occupants of house for committing District of Columbia offense of unlawful entry; some officers were aware that occupants had been expressly or impliedly invited onto property by a woman who, according to one occu-

pant, was renting the house, and although someone an officer spoke with by phone said nobody had permission to be in the house, there was no indication that occupants knew or should have known they were entering against property owner's will, and although a neighbor told officers the house was supposed to be vacant, it was not boarded up or secured in way that indicated owner wanted others to keep out. Wesby v. District of Columbia, 841 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 5680 (2012).

— Entry without lawful authority, nature and elements of offense.

Defendant's conviction for unlawful entry of any private dwelling, building, or other property or part thereof was proper because, with respect to the element that the entry be against the will of the lawful occupant, the government need only prove that defendant knew or should have known that his entry was unwanted. The government did not need to prove that he purposefully sought to defy the will of the lawful occupant or to violate the law. Ortberg v. United States, 81 A.3d 303, 2013 D.C. App. LEXIS 801 (2013).

— Warning or notice, nature and elements of offense.

Because defendant was orally notified by a housing authority officer that he was barred from Garfield Terrace and because he returned to the premises on two occasions after having been barred, the evidence supported his convictions for unlawful entry under D.C. Code § 22-3302. Haye v. United States, 67 A.3d 1025, 2013 D.C. App. LEXIS 66 (2013).

Searches and seizures.

Police officers investigating a rumor that a high school student had threatened to "shoot up" the school had reasonable basis for fearing that violence was imminent, entitling them to qualified immunity in action based on their warrantless entry into student's home; student's parents did not initially answer officers' knock at door or the telephone, when student's mother finally came to door, she did not inquire about the reason for officers' visit or express concern that they were investigating her son, and she then turned and ran back into the house when officers asked her if there were any guns inside. Ryburn v. Huff, 132 S. Ct. 987, 181 L. Ed. 2d 966, 2012 U.S. LEXIS 910 (2012), remanded by 676 F.3d 930, 2012 U.S. App. LEXIS 7920 (9th Cir. 2012).

Summary judgment.

Genuine issue of material fact as to whether police officers who participated in arrests for District of Columbia offense of unlawful entry that were not supported by probable cause were aware that a woman who was supposedly renting the house had given the arrestees permission to enter the house precluded summary judgment on qualified immunity grounds on the arrestees' § 1983 claims of unlawful arrest, even if the officers were ordered by superior officers to make the arrests, or they relied on the probable cause determination of one or more of their fellow officers. Wesby v. District of Columbia, 841 F.Supp.2d 20, 2012 U.S. Dist. LEXIS 5680 (2012).

§ 22-3303. Grave robbery; buying or selling dead bodies.

Whoever, without legal authority or without the consent of the nearest surviving relative, shall disturb or remove any dead body from a grave for the purpose of dissecting, or of buying, selling, or in any way trafficking in the same, shall be imprisoned not less than 1 year nor more than 3 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 891; June 11, 2013, D.C. Law 19-317, § 303(s), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Emergency legislation. — For temporary (90 days) amendment of this section, see § 303(s) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3305. Placing explosives with intent to destroy or injure property.

Whoever places, or causes to be placed, in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destroy, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not more than the amount set forth in § 22-3571.01 and by imprisonment for not less than 2 years or more than 10 years.

(Mar. 3, 1901, ch. 854, § 825a; Mar. 3, 1905, 33 Stat. 1033, ch. 1461; Dec. 27, 1967, 81 Stat. 739, Pub. L. 90-226, title VI, § 607; June 11, 2013, D.C. Law 19-317, § 201(i), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not exceeding $1,000".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 201(i) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3306. Defacing books, manuscripts, publications, or works of art.

Any person who shall wrongfully deface, injure, or mutilate, tear, or destroy any book, pamphlet, or manuscript, or any portion thereof belonging to the Library of Congress, or to any public library in the District of Columbia, whether the property of the United States or of the District of Columbia or of any individual or corporation in said District, or who shall wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, document, manuscript, public record, print, engraving, medal, newspaper, or work of art, the property of the United States or of the District of Columbia, shall be held guilty of a misdemeanor, and, on conviction thereof, shall, when the offense is not otherwise punishable by some statute of the United States, be punished by a fine of not less than $10 and not more than the amount set forth in § 22-3571.01, and by imprisonment for not less than 1 month nor more than 180 days, or both, for every such offense.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 849; June 30, 1902, 32 Stat. 535, ch. 1329; Dec. 1, 1982, D.C. Law 4-164, § 601(d), 29 DCR 3976; Sept. 5, 1985, D.C. Law 6-19, § 14(b), 32 DCR 3590; Aug. 20, 1994, D.C. Law 10-151,§ 105(n), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(l), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "and not more than the amount set forth in § 22-3571.01" for "nor more than $1,000".

Emergency legislation.

For temporary (90 days) amendment of this section, see § 201(l) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 pro-

vided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3307. Destroying or defacing public records.

Whoever maliciously or with intent to injure or defraud any other person defaces, mutilates, destroys, abstracts, or conceals the whole or any part of any record authorized by law to be made, or pertaining to any court or public office in the District, or any paper duly filed in such court or office, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 844; Aug. 20, 1994, D.C. Law 10-151, § 105(o), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(j), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than $1,000".

Emergency legislation.

For temporary (90 days) amendment of this section, see § 201(j) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3309. Destroying boundary markers.

Whoever maliciously cuts down, destroys, or removes any boundary tree, stone, or other mark or monument, or maliciously effaces any inscription thereon, either of his or her own lands or of the lands of any other person whatsoever, even though such boundary or bounded trees should stand within the person's own land so cutting down and destroying the same, shall be fined not more than the amount set forth in § 22-3571.01 and imprisoned not exceeding 180 days.

(Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 880; May 21, 1994, D.C. Law 10-119, § 2(u), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 105(q), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(w), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than $1,000".

Emergency legislation.

For temporary (90 days) amendment of this section, see § 201(w) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3310. Destroying vines, bushes, shrubs, trees or protections thereof; penalty.

It shall be unlawful for any person willfully to top, cut down, remove, girdle, break, wound, destroy, or in any manner injure any vine, bush, shrub, or tree

not owned by that person, or any of the boxes, stakes or any other protection thereof, under a penalty not to exceed, for each and every such offense:

(1) In the case of any tree 55 inches or greater in circumference when measured at a height of four and one half feet, a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 90 days, or both; or

(2) For vines, bushes, shrubs, and smaller trees, a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 30 days, or both.

(July 29, 1892, 27 Stat. 324, ch. 320, § 13; June 19, 2001, D.C. Law 13-314,§ 3, 48 DCR 2076; June 12, 2003, D.C. Law 14-309, § 201, 50 DCR 888; Apr. 13, 2005, D.C. Law 15-354, § 21(b), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 214(d), 60 DCR 2064.)

Effect of amendments.
The 2013 amendment by D.C. Law 19-317 substituted "a fine of not more than the amount set forth in § 22-3571.01" for "$15,000" in (1), and for "$5,000" in (2).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 214(d) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3311. Disorderly conduct in public buildings or grounds; injury to or destruction of United States property.

Any person guilty of disorderly and unlawful conduct in or about the public buildings and public grounds belonging to the United States within the District of Columbia, or who shall wilfully injure the buildings or shrubs, or shall pull down, impair, or otherwise injure any fence, wall, or other inclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, or other property of the United States, or any other part of the public grounds or lots belonging to the United States in the District of Columbia, shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned not more than 6 months, or both.

(July 29, 1892, 27 Stat. 325, ch. 320, § 15; Oct. 20, 1967, 81 Stat. 277, Pub. L. 90-108, § 2; June 11, 2013, D.C. Law 19-317, § 214(e), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than $500".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 214(e) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3312.04. Penalties.

(a) Any person who violates any provision of § 22-3312.01 shall be fined not less than $250 and not more than the amount set forth in § 22-3571.01, or imprisoned for a period not to exceed 180 days, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of § 22-3312.01, pursuant to Chapter 8 of Title 8.

(b) Any person who violates any provision of § 22-3312.02 or § 22-3312.03 shall be guilty of a misdemeanor punishable by a fine not more than the amount set forth in § 22-3571.01, or imprisonment not to exceed 180 days, or both.

(c) In addition to the penalties provided in subsection (a) of this section, a person convicted of violating any provision of § 22-3312.01 may be required to perform community service as provided in § 16-712.

(d) Any person who willfully places graffiti on property without the consent of the owner shall be subject to the sanctions in subsection (a) of this section.

(e) Any person who willfully possesses graffiti material with the intent to place graffiti on property without the consent of the owner shall be fined not less than $100 or more than $1,000.

(f) In addition to any fine or sentence imposed under this section, the court shall order the person convicted to make restitution to the owner of the property, or to the party responsible for the property upon which the graffiti has been placed, for the damage or loss caused, directly or indirectly, by the graffiti, in a reasonable amount and manner as determined by the court.

(g) The District of Columbia courts shall find parents or guardians civilly liable for all fines imposed or payments for abatement required if the minor cannot pay within a reasonable period of time established by the court.

(Mar. 10, 1983, D.C. Law 4-203, § 5, 30 DCR 180; June 12, 2001, D.C. Law 13-309, § 2(d), 48 DCR 1613; June 11, 2013, D.C. Law 19-317, § 234, 60 DCR 2064.)

Section references. — This section is referenced in § 42-3141.08.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "and not more than the amount set forth in § 22-3571.01" for "or more than $1,000" in (a); and substituted "not more than the amount set forth in § 22-3571.01" for "not to exceed $500" in (b).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 234 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3318. Malicious pollution of water.

Every person who maliciously commits any act by reason of which the supply of water, or any part thereof, to the City of Washington, becomes impure, filthy, or unfit for use, shall be fined not less than $500 and not more than the amount set forth in § 22-3571.01, or imprisoned at hard labor not more than 3 years nor less than 1 year.

(R.S., § 1806; Feb. 11, 1895, 28 Stat. 650, ch. 79; June 11, 2013, D.C. Law 19-317, § 219 ac(b), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "and not more than the amount set forth in § 22-3571.01" for "nor more than $1,000".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 219(b) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3319. Placing obstructions on or displacement of railway tracks.

Whoever maliciously places an obstruction on or near the track of any steam or street railway, or displaces or injures anything appertaining to such track, with intent to endanger the passage of any locomotive or car, shall be imprisoned for not more than 10 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 846; June 11, 2013, D.C. Law 19-317, § 303(m), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Emergency legislation. — For temporary (90 days) amendment of this section, see § 303(m) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 34. USE OF "DISTRICT OF COLUMBIA" BY CERTAIN PERSONS.

§ 22-3402. Use of "District of Columbia" or similar designation by private detective or collection agency — Penalty.

Any person who violates § 22-3401 shall be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

(Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 2; June 11, 2013, D.C. Law 19-317, § 235, 60 DCR 2064.)

Section references. — This section is referenced in § 22-3401.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "of not more than $300".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 235 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 35A. VOYEURISM.

Sec.
22-3531. Voyeurism.

§ 22-3531. Voyeurism.

(a) For the purposes of this section, the term:

(1) "Electronic device" means any electronic, mechanical, or digital equipment that captures visual or aural images, including cameras, computers, tape recorders, video recorders, and cellular telephones.

(2) "Private area" means the naked or undergarment-clad genitals, pubic area, anus, or buttocks, or female breast below the top of the areola.

(b) Except as provided in subsection (e) of this section, it is unlawful for any person to occupy a hidden observation post or to install or maintain a peephole, mirror, or any electronic device for the purpose of secretly or surreptitiously observing an individual who is:

(1) Using a bathroom or rest room;

(2) Totally or partially undressed or changing clothes; or

(3) Engaging in sexual activity.

(c)(1) Except as provided in subsection (e) of this section, it is unlawful for a person to electronically record, without the express and informed consent of the individual being recorded, an individual who is:

(A) Using a bathroom or rest room;

(B) Totally or partially undressed or changing clothes; or

(C) Engaging in sexual activity.

(2) Express and informed consent is only required when the individual engaged in these activities has a reasonable expectation of privacy.

(d) Except as provided in subsection (e) of this section, it is unlawful for a person to intentionally capture an image of a private area of an individual, under circumstances in which the individual has a reasonable expectation of privacy, without the individual's express and informed consent.

(e) This section does not prohibit the following:

(1) Any lawful law enforcement, correctional, or intelligence observation or surveillance;

(2) Security monitoring in one's own home;

(3) Security monitoring in any building where there are signs prominently displayed informing persons that the entire premises or designated portions of the premises are under surveillance; or

(4) Any electronic recording of a medical procedure which is conducted under circumstances where the patient is unable to give consent.

(f)(1) A person who violates subsection (b), (c), or (d) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 1 year, or both.

(2) A person who distributes or disseminates, or attempts to distribute or disseminate, directly or indirectly, by any means, a photograph, film, videotape, audiotape, compact disc, digital video disc, or any other image or series of images or sounds or series of sounds that the person knows or has reason to know were taken in violation of subsection (b), (c), or (d) of this section is guilty of a felony and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(g) The Attorney General for the District of Columbia, or his or her assistants, shall prosecute a violation of subsection (b), (c), or (d) of this section for which the penalty is set forth in subsection (f)(1) of this section.

(Apr. 24, 2007, D.C. Law 16-306, § 105, 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 206(d), 60 DCR 2064.)

Section references. — This section is referenced in § 23-581.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (f), substituted "not more than the amount set forth in § 22-3571.01" for "not more than $1,000" in (f)(1), and for "not more than $5,000" in (f)(2).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 206(d) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 35B. FINES FOR CRIMINAL OFFENSES.

Sec.

§ 22-3571.01. Fines for criminal offenses.

(a) Notwithstanding any other provision of the law, and except as provided in § 22-3571.02, a defendant who has been found guilty of an offense under the District of Columbia Official Code punishable by imprisonment may be sentenced to pay a fine as provided in this section.

(b) An individual who has been found guilty of such an offense may be fined not more than the greatest of:

(1) $100 if the offense is punishable by imprisonment for 10 days or less;

(2) $250 if the offense is punishable by imprisonment for 30 days, or one month, or less but more than 10 days;

(3) $500 if the offense is punishable by imprisonment for 90 days, or 3 months, or less but more than 30 days;

(4) $1,000 if the offense is punishable by imprisonment for 180 days, or 6 months, or less but more than 90 days;

(5) $2,500 if the offense is punishable by imprisonment for one year or less but more than 180 days;

(6) $12,500 if the offense is punishable by imprisonment for 5 years or less but more than one year;

(7) $25,000 if the offense is punishable by imprisonment for 10 years or less but more than 5 years;

(8) $37,500 if the offense is punishable by imprisonment for 15 years or less but more than 10 years;

(9) $50,000 if the offense is punishable by imprisonment for 20 years or less but more than 15 years;

(10) $75,000 if the offense is punishable by imprisonment for 30 years or less but more than 20 years;

(11) $125,000 if the offense is punishable by imprisonment for more than 30 years; or

(12) $250,000 if the offense resulted in death.

(c) An organization that has been found guilty of an offense punishable by imprisonment for 6 months or more may be fined not more than the greatest of:

(1) Twice the maximum amount specified in the law setting forth the penalty for the offense;

(2) Twice the applicable amount under subsection (b) of this section; or

(3) Twice the applicable amount under § 22-3571.02(a).

(June 11, 2013, D.C. Law 19-317, § 101, 60 DCR 2064.)

Section references. — This section is referenced in § 2-381.09, § 2-1402.66, § 4-1321.07, § 7-2507.06, § 8-111.09, § 8-1906, § 16-1005, § 16-1024, § 16-2336, § 16-2348, § 16-2364, § 16-2394, § 16-5103, § 18-112, § 20-102, § 21-591, § 22-301, § 22-302, § 22-303, § 22-401, § 22-402, § 22-403, § 22-404, § 22-404.01, § 22-404.02, § 22-404.03, § 22-405, § 22-406, § 22-407, § 22-501, § 22-601, § 22-704, § 22-712, § 22-713, § 22-722, § 22-723, § 22-801, § 22-811, § 22-851, § 22-902, § 22-936, § 22-951, § 22-1006.01, § 22-1012, § 22-1101, § 22-1102, § 22-1211, § 22-1301, § 22-1307, § 22-1312, § 22-1314.02, § 22-1319, § 22-1321, § 22-1322, § 22-1323, § 22-1341, § 22-1402, § 22-1403, § 22-1404, § 22-1405, § 22-1406, § 22-1409, § 22-1502, § 22-1510, § 22-1513, § 22-1514, § 22-1701, § 22-1702, § 22-1703, § 22-1704, § 22-1705, § 22-1706, § 22-1708, § 22-1713, § 22-1803, § 22-1804a, § 22-1805a, § 22-1807, § 22-1810, § 22-1837, § 22-1901, § 22-1931, § 22-2001, § 22-2104, § 22-2105, § 22-2106, § 22-2107, § 22-2201, § 22-2304, § 22-2402, § 22-2403, § 22-2404, § 22-2405, § 22-2501, § 22-2511, § 22-2601, § 22-2603.03, § 22-2701, § 22-2704, § 22-2705, § 22-2706, § 22-2707, § 22-2708, § 22-2709, § 22-2710, § 22-2711, § 22-2712, § 22-2716, § 22-2722, § 22-2731, § 22-2752, § 22-2801, § 22-2802, § 22-2803, § 22-3002, § 22-3003, § 22-3004, § 22-3005, § 22-3006, § 22-3008, § 22-3009, § 22-3009.01, § 22-3009.02, § 22-3009.03, § 22-3009.04, § 22-3010, § 22-3010.01, § 22-3010.02, § 22-3013, § 22-3014, § 22-3015, § 22-3016, § 22-3103, § 22-3134, § 22-3154, § 22-3155, § 22-3212, § 22-3213, § 22-3214, § 22-3214.01, § 22-3214.02, § 22-3215, § 22-3216, § 22-

3218.04, § 22-3222, § 22-3223, § 22-3224, § 22-3225.04, § 22-3226.10, § 22-3227.03, § 22-3231, § 22-3232, § 22-3233, § 22-3234, § 22-3242, § 22-3251, § 22-3252, § 22-3301, § 22-3302, § 22-3303, § 22-3305, § 22-3306, § 22-3307, § 22-3309, § 22-3310, § 22-3311, § 22-3312.04, § 22-3318, § 22-3319, § 22-3402, § 22-3531, § 22-3571.02, § 22-4015, § 22-4134, § 22-4331, § 22-4402, § 22-4404, § 22-4502, § 22-4503, § 22-4504, § 22-4514, § 22-4515, § 22-4515a, § 23-542, § 23-543, § 23-703, § 23-1108, § 23-1110, § 23-1111, § 23-1327, § 23-1328, § 23-1329, § 24-403.01, § 25-434, § 25-772, § 25-785, § 25-831, § 25-1001, § 28-2305, § 28-3313, § 28-3817, § 28-4505, § 28-4506, § 28-4607, § 32-213, § 32-1011, § 32-1307, § 47-102, § 47-391.03, § 47-821, § 47-828, § 47-850.02, § 47-861, § 47-863, § 47-1805.04, § 47-2014, § 47-2018, § 47-2106, § 47-2406, § 47-2408, § 47-2409, § 47-2421, § 47-2707, § 47-2808, § 47-2839.01, § 47-2846, § 47-2850, § 47-2853.27, § 47-2883.04, § 47-2884.16, § 47-2885.20, § 47-2886.14, § 47-2887.14, § 47-3409, § 47-3719, § 47-4101, § 47-4102, § 47-4103, § 47-4104, § 47-4105, § 47-4106, § 47-4107, § 47-4405, § 47-4406, § 48-711, § 48-904.01, § 48-904.02, § 48-904.03, § 48-904.03a, § 48-904.07, § 48-904.10, § 48-921.02, § 48-1005, § 48-1103, § 50-329.05, § 50-405, § 50-607, § 50-1215, § 50-1301.74, § 50-1301.75, § 50-1331.08, § 50-1401.01, § 50-1401.02, § 50-1403.01, § 50-1403.03, § 50-1501.04, § 50-1507.03, § 50-1912, § 50-2201.03, § 50-2201.04, § 50-2201.04b, § 50-2201.05b, § 50-2201.05c, § 50-2201.05d, § 50-2201.28, § 50-2203.01, § 50-2206.13, § 50-2206.15, § 50-2206.16, § 50-2206.18, § 50-2206.32, § 50-2206.34, § 50-2206.36, § 50-2302.03, § 50-2303.02, § 50-2421.04, § 50-2421.09, § 50-2421.10, and § 50-2632.

Emergency legislation. — For temporary (90 days) addition of this section, see § 101 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3571.02. Applicability of fine proportionality provision.

(a) Notwithstanding any other provision of law, a sentence to pay a fine under § 22-3571.01 shall be subject to the following:

(1) If a law setting forth the penalty for such an offense specifies a maximum fine that is lower than the fine otherwise applicable under § 22-3571.01 and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under § 22-3571.01, the defendant may not be fined more than the maximum amount specified in the law setting forth the penalty for the offense.

(2) If a law setting forth the penalty for such an offense specifies a maximum fine that is higher than the fine otherwise applicable under § 22-3571.01 and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under § 22-3571.01, the defendant may be fined the maximum amount specified in the law setting forth the penalty for the offense.

(3) If a law setting forth the penalty for such an offense specifies no fine and such law, by specific reference, does not exempt the offense from the fine otherwise applicable under § 22-3571.01, the defendant may be fined pursuant to § 22-3571.01.

(b)(1) If any person derives pecuniary gain from such an offense, or if the offense results in pecuniary loss to a person other than the defendant, the

defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

(2) The court may impose a fine under this subsection in excess of the fine provided for by § 22-3571.01 only to the extent that the pecuniary gain or loss is both alleged in the indictment or information and is proven beyond a reasonable doubt.

(c) [This chapter and the provisions of D.C. Law 19-317] shall not apply to any provision of Title 11 of the District of Columbia Official Code.

(June 11, 2013, D.C. Law 19-317, § 102, 60 DCR 2064.)

Section references. — This section is referenced in § 22-3571.01.

Emergency legislation. — For temporary (90 days) addition of this section, see § 102 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3571.01.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE II. ENHANCED PENALTIES.

CHAPTER 37. BIAS-RELATED CRIME.

§ 22-3704. Civil action.

CASE NOTES

Applicability.

D.C. Code § 22-3704(a) did not apply to an employee's intimidation claim against a supervisor where the employee had not set forth any facts indicating that the supervisor committed a bias related crime with respect to her and, even if she had, that any such crime somehow related to her employment at the local council of governments. Uzoukwu v. Metro. Wash. Council of Gov'ts, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 140452 (D.D.C. Sept. 30, 2013).

SUBTITLE III. SEX OFFENDERS.

CHAPTER 40. SEX OFFENDER REGISTRATION.

Sec.
22-4015. Penalties; mandatory release condition.

§ 22-4015. Penalties; mandatory release condition.

(a) Any sex offender who knowingly violates any requirement of this chapter, including any requirement adopted by the Agency pursuant to this chapter, shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 180 days, or both. In the event that a sex offender

convicted under this section has a prior conviction under this section, or a prior conviction in any other jurisdiction for failing to comply with the requirements of a sex offender registration program, the sex offender shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned not more than 5 years, or both.

(b) Compliance with the requirements of this chapter, including any requirements adopted by the Agency pursuant to this chapter, shall be a mandatory condition of probation, parole, supervised release, and conditional release of any sex offender.

(July 11, 2000, D.C. Law 13-137, § 16, 47 DCR 797; June 11, 2013, D.C. Law 19-317, § 236, 60 DCR 2064.)

Section references. — This section is referenced in § 16-801.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (a), substituted "not more than the amount set forth in § 22-3571.01" for "not more than $1,000" in the first sentence, and for "not more than $25,000" in the second sentence.

Emergency legislation. — For temporary (90 days) amendment of this section, see § 236 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE III-A. DNA TESTING.

Chapter 41A. DNA Testing and Post-Conviction Relief for Innocent Persons.

§ 22-4131. Definitions.

For the purposes of this chapter, the term:

(1) "Actual innocence" or "actually innocent" means that the person did not commit the crime of which he or she was convicted.

(2) "Biological material" means the contents of a sexual assault examination kit, bodily fluids (including, but not limited to, blood, semen, saliva, and vaginal fluid), hair, skin tissue, fingernail scrapings, bone, or other human DNA source matter which apparently derived from the perpetrator of a crime or, under circumstances that may be probative of the perpetrator's identity, apparently derived from the victim of a crime. This definition applies equally to material that is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, or cigarettes, and to material that is recovered from evidence and thereafter

maintained separately from that evidence, including, but not limited to, on a slide, on a swab, in cuttings, or in scrapings.

(3) "Crime of violence" means the crimes cited in § 23-1331(4).

(4) "DNA" means deoxyribonucleic acid.

(5) "DNA testing" means forensic DNA analysis of biological material.

(6) "Law enforcement agencies" means the Metropolitan Police Department, the Corporation Counsel for the District of Columbia, prosecutors, or any other governmental agency that has the authority to investigate, make arrests for, or prosecute or adjudicate District of Columbia criminal or delinquency offenses. The term "law enforcement agencies" shall include law enforcement agencies that have entered into cooperative agreements with the Metropolitan Police Department pursuant to § 5-133.17, to the extent the law enforcement agency is acting pursuant to such a cooperative agreement.

(7) "New evidence" means evidence that:

(A) Was not personally known and could not, in the exercise of reasonable diligence, have been personally known to the movant at the time of the trial or the plea proceeding;

(B) Was personally known to the movant at the time of the trial or the plea proceeding, but could not be produced at that time because:

(i) The presence or the testimony of a witness could not be compelled or, in the exercise of reasonable diligence by the movant, otherwise obtained; or

(ii) Physical evidence, in the exercise of the movant's reasonable diligence, could not be obtained; or

(C) Was obtained as a result of post-conviction DNA testing.

(May 17, 2002, D.C. Law 14-134, § 2, 49 DCR 408; June 19, 2013, D.C. Law 19-320, § 510, 60 DCR 3390.)

Section references. — This section is referenced in § 5-113.32 and § 22-4133.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320, in (2), substituted "the contents of a sexual assault examination kit, bodily fluids (including, but not limited to, blood, semen, saliva, and vaginal fluid), hair, skin tissue, fingernail scrapings, bone, or other human DNA source matter" for "a sexual assault forensic examination kit, semen, vaginal fluid, blood, saliva, visible skin tissue, or hair" and added the last sentence.

Emergency legislation. — For temporary amendment of (2), see § 510 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

For temporary (90 days) amendment of this section, see § 510 of the Omnibus Criminal Code Amendment Congressional Review Emergency Act of 2013 (D.C. Act 20-44, April 1, 2013, 60 DCR 5381, 20 DCSTAT 1281).

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

§ 22-4133. Post-conviction DNA testing.

Section references. — This section is referenced in § 22-4132.

CASE NOTES

Analysis

Eligible material.
Existence of material.
Reasonable probability.

Eligible material.

Appellant complied with D.C. Code § 22-4133(b)(2) by requesting testing of all bloody material at the murder scene, a small apartment; he was not required to compile a literal laundry list of material — e.g., bloody sock, bloody carpet, bloody footprint. Mitchell v. United States, 80 A.3d 962, 2013 D.C. App. LEXIS 795 (2013).

Existence of material.

Where the government claims no biological evidence for DNA exists, the applicant for DNA testing must be given the opportunity respond to the government's statements before a decision can be rendered. If the court determines that there is a genuine factual dispute as to whether the evidence exists, ordinarily it should hold a hearing. Mitchell v. United States, 80 A.3d 962, 2013 D.C. App. LEXIS 795 (2013).

Where the government claims no biological evidence for DNA exists, the trial court's inquiry is not whether the material does not exist or no longer exists, but whether the government has performed a "reasonable search." If the government cannot demonstrate that it has done so, the court can order it to take additional measures. Mitchell v. United States, 80 A.3d 962, 2013 D.C. App. LEXIS 795 (2013).

Trial court erred in denying defendant's request for DNA testing of blood at the scene of a murder he was convicted of committing, because it failed to require the government, which claimed that no such evidence existed, to proffer evidence that it made a reasonable search for such evidence. Mitchell v. United States, 80 A.3d 962, 2013 D.C. App. LEXIS 795 (2013).

Reasonable probability.

Court erred in denying appellant's request for DNA testing on the basis that he had not "adequately explained" how such testing would help establish his innocence, because D.C. Code § 22-4133 (b)(4) required him just to explain this, not to "adequately" explain it, which he did by his statement that the perpetrator fought with the victim, was injured, and would be identified by the DNA he left at the scene. Mitchell v. United States, 80 A.3d 962, 2013 D.C. App. LEXIS 795 (2013).

§ 22-4134. Preservation of evidence.

(a) Law enforcement agencies shall preserve biological material that was seized or recovered as evidence in the investigation or prosecution that resulted in the conviction or adjudication as a delinquent for a crime of violence and not consumed in previous DNA testing for 5 years or as long as any person incarcerated in connection with that case or investigation remains in custody, whichever is longer.

(b) Notwithstanding subsection (a) of this section, the District of Columbia may dispose of the biological material after 5 years, if the District of Columbia notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for such person (or, if there is no counsel of record, the Public Defender Service), of the intention of the District of Columbia to dispose of the evidence and the District of Columbia affords such person not less than 180 days after the notification to make an application for DNA testing of the evidence.

(c) The District of Columbia shall not be required to preserve evidence that must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable. If practicable, the District of Columbia shall remove and preserve portions of this material evidence sufficient to permit future DNA testing before returning or disposing of it.

(d) Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence that is required to be preserved under this section with the intent to (1) impair the integrity of that evidence, (2) prevent that evidence

from being subjected to DNA testing, or (3) prevent the production or use of that evidence in an official proceeding, shall be subject to a fine not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(May 17, 2002, D.C. Law 14-134, § 5, 49 DCR 408; June 11, 2013, D.C. Law 19-317, § 237, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "of $100,000" in (d).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 237 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-4135. Motion to vacate a conviction or grant a new trial on the ground of actual innocence.

Section references. — This section is referenced in § 16-802.

CASE NOTES

Recantation.

Even if victim's letter to trial court constituted a recantation and her recantation was credited, defendant, who had been convicted of assault with intent to commit first-degree sexual abuse (AWICSA), failed to show that a manifest injustice occurred, as necessary to warrant vacation of his sentence, or that he was actually innocent, as necessary to warrant relief under Innocence Protection Act (IPA); evidentiary value of victim's purported recantation was low, and would have, at best, been used to impeach her initial account of the events that a rape or attempted rape had occurred, defendant did not dispute that he seriously assaulted victim with a knife, nor could he, given the extent of her wounds as reflected in the medical records, victim's initial account of what happened continued to carry weight, especially in light of its consistency with the other evidence, and a paramedic recalled that while victim was receiving treatment, she reported having been raped. Meade v. United States, 48 A.3d 761, 2012 D.C. App. LEXIS 322 (2012).

That a government witness vaguely recanted some of her testimony did not entitle appellant to postconviction relief because it did not tend to prove his actual innocence, since she did not witness the crime but testified about her abuse by appellant throughout their marriage, which went to his motive for attacking the men he thought were living with her. Mitchell v. United States, 80 A.3d 962, 2013 D.C. App. LEXIS 795 (2013).

SUBTITLE IV. PREVENTION, SOLUTION, AND PUNISHMENT OF CRIMES.

CHAPTER 42A. CRIMINAL JUSTICE COORDINATING COUNCIL.

Subchapter I. General

Subchapter I. General.

§ 22-4233. Membership.

(a) The Criminal Justice Coordinating Council shall include the following members:

(1) Mayor, District of Columbia (Chair);

(2) Chairman, Council of the District of Columbia;

(3) Chairperson, Judiciary Committee, Council of the District of Columbia;

(4) Chief Judge, Superior Court of the District of Columbia;

(5) Chief, Metropolitan Police Department;

(6) Director, District of Columbia Department of Corrections;

(7) Attorney General for the District of Columbia;

(8) Director, Department of Youth Rehabilitation Services;

(9) Director, Public Defender Service;

(10) Director, Pretrial Services Agency;

(11) Director, Court Services and Offender Supervision Agency;

(12) United States Attorney for the District of Columbia;

(13) Repealed;

(14) Director, Federal Bureau of Prisons;

(15) Chair, United States Parole Commission; and

(16) Repealed;

(17) Repealed;

(18) The United States Marshal, Superior Court of the District of Columbia.

(b) Repealed.

(Oct. 3, 2001, D.C. Law 14-28, § 1504, 48 DCR 6981; June 19, 2013, D.C. Law 19-320, § 106, 60 DCR 3390.)

Section references. — This section is referenced in § 24-1302.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 substituted "Attorney General for the District of Columbia" for "Corporation Counsel for the District of Columbia" in (a)(7); substituted "Department of Youth Rehabilitation Services" for "Department of Human Services' Youth Rehabilitation Services" in (a)(8); repealed (a)(13), (a)(16), and (a)(17); added (a)(18) and made related changes; and repealed (b), which read: "Membership of the Authority members shall expire upon the dissolution of the Authority."

Emergency legislation.

For temporary amendment of (a) and repeal of (b), see § 106 of the Omnibus Criminal Code Amendments Emergency Amendment Act of

2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

For temporary (90 days) amendment of this section, see § 106 of the Omnibus Criminal Code Amendment Congressional Review Emergency Act of 2013 (D.C. Act 20-44, April 1, 2013, 60 DCR 5381, 20 DCSTAT 1281).

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

§ 22-4234. Duties.

(a) The Criminal Justice Coordinating Council shall:

(1) Make recommendations concerning the coordination of the activities and the mobilization of the resources of the member agencies in improving public safety in, and the criminal justice system of, the District of Columbia;

(2) Cooperate with and support the member agencies in carrying out the purposes of the CJCC;

(3) Define and analyze issues and procedures in the criminal justice system, identify alternative solutions, and make recommendations for improvements and changes in the programs of the criminal justice system;

(4) Receive information from, and give assistance to, other District of Columbia agencies concerned with, or affected by, issues of public safety and the criminal justice system;

(5) Make recommendations regarding systematic operational and infrastructural matters as are believed necessary to improve public safety in District of Columbia and federal criminal justice agencies;

(6) Advise and work collaboratively with the Office of the Deputy Mayor for Public Safety and Justice, Justice Grants Administration in developing justice planning documents and allocating grant funds;

(7) Select ex-officio members to participate in Criminal Justice Coordinating Council planning sessions and subcommittees as necessary to meet the organization's goals;

(8) Establish measurable goals and objectives for reform initiatives; and

(b) The CJCC shall also report, on an annual basis, on the status and progress of the goals and objectives referenced in subsection (a)(8) of this section, including any recommendations made by the CJCC and its subcommittees to the membership of the CJCC, the public, the Mayor, and the Council. The report shall be submitted to the Mayor and the Council within 90 days after the end of each fiscal year and shall be the subject of a public hearing before the Council during the annual budget process. The CJCC's budget and future funding requests shall also be the subject of a hearing before the Council during the annual budget process.

(c) The CJCC is designated as a criminal justice agency for purposes of transmitting electronically to local, state, and federal agencies criminal-justice-related information, as required by CJCC to perform the duties specified under this section and in accordance with the terms and conditions regarding data sharing approved by the agency that is the source of the information for transmission.

(Oct. 3, 2001, D.C. Law 14-28, § 1505, 48 DCR 6981; Dec. 24, 2013, D.C. Law 20-61, § 3072, 60 DCR 12472.)

Effect of amendments. — The 2013 amendment by D.C. Law 20-61 added (c).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 3072 of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 3072 of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — Law 20-61, the "Fiscal Year 2014 Budget Support Act of 2013," was introduced in Council and assigned Bill No. 20-199. The Bill was adopted on first and second readings on May 22, 2013, and June 26, 2013, respectively. Signed by the Mayor on Aug. 28, 2013, it was assigned Act No. 20-157 and transmitted to Congress for its review. D.C. Law 20-61 became effective on Dec. 24, 2013.

Short title. — Section 3071 of D.C. Law 20-61 provided that Subtitle H of Title III of the act may be cited as the "Criminal Justice Coordinating Council Criminal Justice Designation Amendment Act of 2013".

Editor's notes. — Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

§ 22-4235. Administrative support.

(a) There are authorized such funds as may be necessary to support the CJCC.

(b) The CJCC is authorized to hire staff and to obtain appropriate office space, equipment, materials, and services necessary to carry out its responsibilities.

(b-1) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the CJCC unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the CJCC[.] An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the CJCC for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The CJCC shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(c) The CJCC shall serve as the personnel authority for all employees of the CJCC. The CJCC shall exercise this authority consistent with Chapter 6 of Title 1.

(d) The CJCC may exercise procurement authority to carry out the responsibilities of the CJCC, including contracting and contract oversight. The CJCC shall exercise this authority consistent with Chapter 3A of Title 2 [§ 2-351.01 et seq.], except § 2-352.01(a) shall not apply.

(Oct. 3, 2001, D.C. Law 14-28, § 1506, 48 DCR 6981; Feb. 6, 2008, D.C. Law 17-108, § 211, 54 DCR 10993; Sept. 26, 2012, D.C. Law 19-171, § 214, 59 DCR 6190.)

Effect of amendments.
The 2012 amendment by D.C. Law 19-171 substituted "consistent with Chapter 3A of Title 2; except that § 2-352.01(a) shall not apply" for "consistent with Unit A of Chapter 3 of Title 2, except with regard to the powers and duties outlined in § 2-301.05(a), (b), (c), and (e)" in (d).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

SUBTITLE V. HARBOR, GAME AND FISH LAWS.

CHAPTER 43. GAME AND FISH LAWS.

§ 22-4331. Penalties; prosecutions.

(a) Any person convicted of violating any provision of this chapter, or any regulation made pursuant to this chapter, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 90 days, or both.

(b) Prosecutions for violations of this chapter, or the regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any Assistant Corporation Counsel.

(Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 4; May 21, 1994, D.C. Law 10-119, § 11(a), 41 DCR 1639; June 11, 2013, D.C. Law 19-317, § 238, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than $300" in (a).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 238 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 44. HARBOR REGULATIONS.

§ 22-4402. Throwing or depositing matter in Potomac River.

(a) It shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any stone, gravel, sand, ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below highwater mark, unless for the purpose of making a wharf, after permission has been obtained from the Mayor of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation.

(b) It shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, or filth of any kind whatsoever.

(c) Nothing in this section contained shall be construed to interfere with the work of improvement in or along the said river and harbor under the supervision of the United States government.

(d) Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not more than the amount set forth in § 22-3571.01, or by imprisonment not exceeding 6 months, or both, in the discretion of the court.

(Feb. 3, 1913, 37 Stat. 656, ch. 25; June 11, 2013, D.C. Law 19-317, § 239, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not exceeding $100" in (d).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 239 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-4404. Penalties for violation of § 22-4403.

Any person who shall violate any provision of § 22-4403 shall for each such offense be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 90 days, or both.

(Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 902; Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 7; June 11, 2013, D.C. Law 19-317, § 201(x), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than $300".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 201(x) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-4402.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE VI. REGULATION AND POSSESSION OF WEAPONS.

CHAPTER 45. WEAPONS AND POSSESSION OF WEAPONS.

§ 22-4501. Definitions.

For the purposes of this chapter, the term:

(1) "Crime of violence" shall have the same meaning as provided in § 23-1331(4).

(2) "Dangerous crime" means distribution of or possession with intent to distribute a controlled substance. For the purposes of this definition, the term "controlled substance" means any substance defined as such in the District of Columbia Official Code or any Act of Congress.

(2A) "Firearm" means any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to, expel a projectile or projectiles by the action of an explosive. The term "firearm" shall not include:

(A) A destructive device as that term is defined in § 7-2501.01(7);

(B) A device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or

(C) A device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(3) "Knuckles" means an object, whether made of metal, wood, plastic, or other similarly durable material that is constructed of one piece, the outside part of which is designed to fit over and cover the fingers on a hand and the inside part of which is designed to be gripped by the fist.

(4) "Machine gun" shall have the same meaning as provided in § 7-2501.01(10).

(5) "Person" includes individual, firm, association, or corporation.

(6) "Pistol" shall have the same meaning as provided in § 7-2501.01(12).

(6A) "Place of business" shall have the same meaning as provided in § 7-2501.01(12A).

(7) "Playground" means any facility intended for recreation, open to the public, and with any portion of the facility that contains one or more separate apparatus intended for the recreation of children, including, but not limited to, sliding boards, swingsets, and teeterboards.

(7A) "Registrant" means a person who has registered a firearm pursuant to Unit A of Chapter 25 of Title 7.

(8) "Sawed-off shotgun" shall have the same meaning as provided in § 7-2501.01(15).

(9) "Sell" and "purchase" and the various derivatives of such words shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

(9A) "Shotgun" shall have the same meaning as provided in § 7-2501.01(16).

(10) "Video arcade" means any facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement, and which contains a minimum of 10 pinball or video machines.

(11) "Youth center" means any recreational facility or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

(July 8, 1932, 47 Stat. 650, ch. 465, § 1; Dec. 27, 1967, 81 Stat. 736, Pub. L. 90-226, title V, § 501; Dec. 1, 1982, D.C. Law 4-164, § 601(e), 29 DCR 3976; July 28, 1989, D.C. Law 8-19, § 3(a), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(a), 37 DCR 24; Aug. 18, 1994, D.C. Law 10-150, § 3(a), 41 DCR 2594; Aug. 20, 1994, D.C. Law 10-151, § 109, 41 DCR 2608; May 23, 1995, D.C. Law 10-257, § 401(c), 42 DCR 53; May 17, 1996, D.C. Law 11-119, § 4, 43 DCR 528; June 3, 1997, D.C. Law 11-275, § 8, 44 DCR 1408; June 8, 2001, D.C. Law 13-300, § 3, 47 DCR 7037; Oct. 17, 2002, D.C. Law 14-194, § 155, 49 DCR 5306; Apr. 24, 2007, D.C. Law 16-306, § 223(a), 53 DCR 8610; May 15, 2009, D.C. Law 17-390, § 3(a), 55 DCR 11030; May 20, 2009, D.C. Law 17-388, § 2(a), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170, § 3(a), 59 DCR 5691.)

Section references. — This section is referenced in § 5-113.32, § 7-2508.01, § 16-2305.02, § 16-2333, § 16-4205, § 22-1804a, § 22-2104.01, § 22-4504, § 24-221.01b, § 24-403, § 24-403.01, § 24-408, § 24-921, and § 48-1203.

Effect of amendments.

The 2012 amendment by D.C. Law 19-170 redesignated former (2A)(1) through (2A)(3) as (2A)(A) through (2A)(C).

Emergency legislation.

For temporary amendment of (2A), see § 3(a) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

Legislative history of Law 19-170. — Law 19-170, the "Firearms Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-614. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-366 and transmitted to Congress for its review. D.C. Law 19-170 became effective on Sept. 26, 2012.

CASE NOTES

ANALYSIS

Crimes of violence.
Dangerous weapon.
Knuckles.
Operability.
Pistol.
Weight and sufficiency of evidence.

Crimes of violence.

Offense of assault with significant bodily injury was not a crime of violence, and thus, defendant should not have been charged with assault with significant bodily injury while armed or with a related count of possessing a firearm during a crime of violence (PFCV), which increased his potential term of imprisonment. Colter v. United States, 37 A.3d 282, 2012 D.C. App. LEXIS 63 (2012), writ of certiorari denied by 133 S. Ct. 554, 184 L. Ed. 2d 360, 2012 U.S. LEXIS 8443, 81 U.S.L.W. 3229 (U.S. 2012).

Dangerous weapon.

Defendant could not reasonably claim that he had no notice that his conduct of carrying a "trench knife" was prohibited; thus, defendant was properly convicted under D.C. Code § 22-4514. Thompson v. United States, 59 A.3d 961, 2013 D.C. App. LEXIS 12 (2013).

Knuckles.

Definition of "knuckles" in D.C. Code § 22-4501(3) is not unconstitutionally vague. Thompson v. United States, 59 A.3d 961, 2013 D.C. App. LEXIS 12 (2013).

Operability.

Defendant violated the District of Columbia's regulations by carrying an inoperable BB gun outside a building; carrying or possessing a BB gun outside a building in the District of Columbia violates the regulations without regard to whether the BB gun is operable since the "regardless of operability" language in this statute shows that the District of Columbia legislature has rejected the approach of the case law implying operability as a requirement for conviction. In re D.F., 70 A.3d 240, 2013 D.C. App. LEXIS 390 (2013).

Pistol.

Evidence was insufficient to convict defendant of carrying a pistol without a license in violation of D.C. Code § 22-4504(a), as it did not establish that the weapon he carried was a pistol as defined by former D.C. Code § 22-4501(a), i.e., had a barrel less than 12 inches long. Jenkins v. United States, 80 A.3d 978, 2013 D.C. App. LEXIS 796 (2013).

Weight and sufficiency of evidence.

Because a police officer's testimony as to the barrel lengths of weapons was based on the officer's familiarity with the outward appearances of specified types of pistols which the officer was asked to describe, the trial court did not err in permitting the officer to testify without the trappings of an expert witness. Harrison v. United States, 76 A.3d 826, 2013 D.C. App. LEXIS 524 (2013), writ of certiorari denied by 2014 U.S. LEXIS 1812, 82 U.S.L.W. 3528 (U.S. Mar. 10, 2014).

§ 22-4502. Additional penalty for committing crime when armed.

(a) Any person who commits a crime of violence, or a dangerous crime in the District of Columbia when armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles):

(1) May, if such person is convicted for the first time of having so committed a crime of violence, or a dangerous crime in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment which may be up to, and including, 30 years for all offenses except first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, and first degree child sexual abuse while armed, and shall, if convicted of such offenses while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 5 years; and

(2) Shall, if such person is convicted more than once of having so

committed a crime of violence, or a dangerous crime in the District of Columbia, or an offense in any other jurisdiction that would constitute a crime of violence or dangerous crime if committed in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment of not less than 5 years and, except for first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed and first degree child sexual abuse while armed, not more than 30 years, and shall, if convicted of such second offense while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 10 years.

(3) Shall, if such person is convicted of first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, or first degree child sexual abuse while armed, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment of not less than the minimum and mandatory minimum sentences required by subsections (a)(1), (a)(2), (c) and (e) of this section and § 22-2104, and not more than life imprisonment or life imprisonment without possibility of release as authorized by § 24-403.01(b-2); § 22-2104; § 22-2104.01; and §§ 22-3002, 22-3008, and 22-3020.

(4) For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offenses defined by this section are Class A felonies.

(b) Repealed.

(c) Any person sentenced pursuant to paragraph (1), (2), or (3) of subsection (a) above for a conviction of a crime of violence or a dangerous crime while armed with any pistol or firearm, shall serve a mandatory-minimum term of 5 years, if sentenced pursuant to paragraph (1) of subsection (a) of this section, or 10 years, if sentenced pursuant to paragraph (2) of subsection (a) of this section, and such person shall not be released, granted probation, or granted suspension of sentence, prior to serving such mandatory-minimum sentence.

(d) Repealed.

(e)(1) Subchapter I of Chapter 9 of Title 24 shall not apply with respect to any person sentenced under paragraph (2) of subsection (a) of this section or to any person convicted more than once of having committed a crime of violence or a dangerous crime in the District of Columbia sentenced under subsection (a)(3) of this section.

(2) The execution or imposition of any term of imprisonment imposed under paragraph (2) or (3) of subsection (a) of this section may not be suspended and probation may not be granted.

(e-1) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(f) Nothing contained in this section shall be construed as reducing any sentence otherwise imposed or authorized to be imposed.

(g) No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.

(July 8, 1932, 47 Stat. 560, ch. 465, § 2; Dec. 27, 1967, 81 Stat. 737, Pub. L. 90-226, title VI, § 605; July 29, 1970, 84 Stat. 600, Pub. L. 91-358, title II,

§ 205; Mar. 9, 1983, D.C. Law 4-166, §§ 3-7, 30 DCR 1082; Dec. 7, 1985, D.C. Law 6-69, § 9, 32 DCR 4587; July 28, 1989, D.C. Law 8-19, § 3(b), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(b), 37 DCR 24; May 21, 1994, D.C. Law 10-119, § 15(a), 41 DCR 1639; June 8, 2001, D.C. Law 13-302,§ 6(a), 47 DCR 7249; June 19, 2001, D.C. Law 13-313, § 21(b)(1), (2), 48 DCR 1873; Dec. 10, 2009, D.C. Law 18-88, § 219(a), 56 DCR 7413; Sept. 29, 2012, D.C. Law 19-170, § 3(b), 59 DCR 5691; June 11, 2013, D.C. Law 19-317, § 310, 60 DCR 2064.)

Section references. — This section is referenced in § 4-751.01, § 5-113.32, § 22-4513, § 23-1322, § 24-221.06, § 24-403, § 24-403.01, and § 24-467.

Effect of amendments.

The 2012 amendment by D.C. Law 19-170 added "or a dangerous crime" following "a crime of violence" in (c).

The 2013 amendment by D.C. Law 19-317 added (e-1).

Emergency legislation.

For temporary (90 day) amendment of section, see § 3(b) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 3(b) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

For temporary amendment of (c), see § 3(b) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

For temporary (90 days) amendment of this section, see § 310 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-170. — See note to § 22-4501.

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Analysis

Instructions.

— Assault offenses, instructions.

Trial court's jury instruction defining significant bodily injury under the assault of a police officer while armed statute, D.C. Code §§ 22-405(c) and 22-4502, as an injury that required hospitalization or immediate medical attention was proper as the assault of a police officer and the felony assault amendments, enacted at the same time, both used the same language to characterize the crime (significant bodily injury), and the latter, D.C. Code § 22-404(a)(2), defined that phrase; the felony assault definition applied under both statutes. Fadero v. United States, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

Merger of offenses.

Defendant's four convictions for assault with intent to rob while armed, under D.C. Code §§ 22-401 and 22-4502, did not merge into one conviction for sentencing because, while defendant pointed a gun at the four victims and demanded money, a second gunman, who walked behind the victims, aimed the gun at the group, moving the gun between different people. As the second gunman was defendant's co-conspirator, defendant was vicariously liable for the second gunman's four assaults, one for each member of the group of four victims. Snowden v. United States, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

Defendant's two convictions for possession of a firearm during a crime of violence, under D.C.

Code § 22-4504(b), did not merge with the underlying convictions for armed robbery, under D.C. Code §§ 22-2801 and 22-4502, and aggravated assault while armed, under D.C. Code §§ 22-404.01 and 22-4502 because the offenses required different elements of proof. The armed robbery and aggravated assault while armed offenses required proof that defendant was "armed with" or had "readily available" a dangerous weapon, which could, but need not, have been a firearm, while the possession of a firearm during a crime of violence offenses required proof of elements not required by the armed enhancement statute — that is, proof of "possession" of a "firearm." Snowden v. United States, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

Merger was proper because the predicate offenses—assault with a dangerous weapon, mayhem while armed, and aggravated assault while armed—merged into one, and because the possession of a firearm during a crime of violence convictions arose out of defendant's uninterrupted possession of a single weapon during a single act of violence. Nero v. United States, 73 A.3d 153, 2013 D.C. App. LEXIS 497 (2013).

Purposes and legislative intent.

The primary purpose of statute authorizing imposition of enhanced sentence for a person who commits a crime of violence or a dangerous crime involving a firearm is to authorize imposition of an additional penalty for committing certain underlying offenses while armed with or having readily available a dangerous weapon; statute also serve the additional purposes of requiring more severe treatment of recidivists and those who wield firearms, as reflected in the required five-year mandatory-minimum sentences. Clyburn v. United States, 48 A.3d 147, 2012 D.C. App. LEXIS 312 (2012).

Sentence and punishment.

— Weight and sufficiency of evidence, sentence and punishment.

Evidence was insufficient to establish that assault rifle was "readily available" to defendant while he committed underlying offense of possession with intent to distribute (PWID), thus precluding imposition of enhanced sentence under statute governing crimes of violence or dangerous crimes involving firearms; the assault rifle was located in the bedroom beyond the living room where drug money was located and beyond the dining and hallway area, and no evidence was introduced specifying the distance between the living room and the bedroom, or the ease of the path from the living room to the bedroom and the assault rifle. Clyburn v. United States, 48 A.3d 147, 2012 D.C. App. LEXIS 312 (2012).

Significant bodily injury.

Significant bodily injury under the assault of a police officer while armed statute, D.C. Code §§ 22-405(c) and 22-4502, is defined as an injury that requires hospitalization or immediate medical attention since the assault of a police officer and the felony assault amendments, enacted at the same time, both use the same language to characterize the crime (significant bodily injury), and the latter, D.C. Code § 22-404(a)(2), defines that phrase; the felony assault definition applies under both statutes. Fadero v. United States, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

Weight and sufficiency of evidence.

— Assault offenses generally, weight and sufficiency of evidence.

Evidence was sufficient to support defendant's convictions, on a conspiracy theory, for aggravated assault while armed, under D.C. Code §§ 22-404.01 and 22-4502, and assault with intent to rob while armed, under D.C. Code §§ 22-401 and 22-4502, because (1) one of the victims testified that the victim saw defendant put on a black ski mask and lead other perpetrators to the four victims; (2) defendant pointed a gun at the victims and demanded money; (3) a second gunman, who walked behind the victims, aimed the gun at the group, moving the gun between different people; (4) after defendant took money from one of the victims, that victim and defendant wrestled over defendant's gun; (5) defendant fled with defendant's gun; and (6) the second gunman kept the gun trained on that victim and shot that victim about 15 seconds after defendant fled. Snowden v. United States, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

Sufficient evidence supported defendant's conviction for assault of a police officer while armed under D.C. Code §§ 22-405 and 22-4502 where: (1) defendant backed the van into a police officer; (2) the officer was driving a police vehicle, wearing an officer's uniform, and spoke with defendant as a police officer, through defendant's open car window; (3) defendant's backing into the officer, even slowly, created a grave risk of significant bodily injury, as the officer as standing, alone, at the side of a busy highway and could have been knocked very easily into oncoming traffic; and (4) the van was considered a dangerous weapon if it was used in a manner that actually caused a risk of serious injury. Fadero v. United States, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

— Use of weapon, weight and sufficiency of evidence.

Evidence was sufficient to support defendants' convictions for assault with intent to kill while armed because one defendant made statements which indicated an intent to rob the

victim, both defendants were armed when they met with the victim when a third person sought to buy marijuana from the victim, both defendants pulled out their guns, one defendant said to give it up, and one defendant shot the victim while the other defendant shot a person who was with the victim. Harrison v. United States, 76 A.3d 826, 2013 D.C. App. LEXIS 524 (2013), writ of certiorari denied by 2014 U.S. LEXIS 1812, 82 U.S.L.W. 3528 (U.S. Mar. 10, 2014).

Evidence was sufficient to support defendants' convictions for felony murder because one defendant made statements which indicated an intent to rob the victim, both defendants were armed when they met with the victim when a third person sought to buy marijuana from the victim, both defendants pulled out their guns, one defendant said to give it up, and one defendant shot the victim while the other defendant shot a person who was with the victim. Harrison v. United States, 76 A.3d 826, 2013 D.C. App. LEXIS 524 (2013), writ of certiorari denied by 2014 U.S. LEXIS 1812, 82 U.S.L.W. 3528 (U.S. Mar. 10, 2014).

§ 22-4502.01. Gun free zones; enhanced penalty.

CASE NOTES

Double jeopardy.

Separate sentences for carrying pistol without license, possession of firearm by convicted felon, and unregistered firearm did not violate prohibition against double jeopardy; each crime required proof of element that others did not, in that unregistered firearm required proof firearm was unregistered, unlawful possession of firearm by felon required proof that defendant was convicted felon, and carrying pistol without license required proof that defendant carried weapon. Washington v. U.S., 2012 WL 2050378 (2012).

§ 22-4503. Unlawful possession of firearm.

(a) No person shall own or keep a firearm, or have a firearm in his or her possession or under his or her control, within the District of Columbia, if the person:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is not licensed under § 22-4510 to sell weapons, and the person has been convicted of violating this chapter;

(3) Is a fugitive from justice;

(4) Is addicted to any controlled substance, as defined in § 48-901.02(4);

(5) Is subject to a court order that:

(A)(i) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate; or

(ii) Remained in effect after the person failed to appear for a hearing of which the person received actual notice;

(B) Restrains the person from assaulting, harassing, stalking, or threatening the petitioner or any other person named in the order; and

(C) Requires the person to relinquish possession of any firearms;

(6) Has been convicted within the past 5 years of an intrafamily offense, as defined in D.C. Official Code § 16-1001(8), punishable as a misdemeanor, or any similar provision in the law of another jurisdiction.

(b)(1) A person who violates subsection (a)(1) of this section shall be sentenced to imprisonment for not more than 10 years and shall be sentenced to imprisonment for a mandatory-minimum term of 1 year, unless she or he has a prior conviction for a crime of violence other than conspiracy, in which case she or he shall be sentenced to imprisonment for not more than 15 years and shall be sentenced to a mandatory-minimum term of 3 years.

(2) A person sentenced to a mandatory-minimum term of imprisonment under paragraph (1) of this subsection shall not be released from prison or granted probation or suspension of sentence prior to serving the mandatory-minimum sentence.

(3) In addition to any other penalty provided under this subsection, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(c) A person who violates subsection (a)(2) through (a)(6) of this section shall be sentenced to not less than 2 years nor more than 10 years, fined not more than the amount set forth in § 22-3571.01, or both.

(d) For the purposes of this section, the term:

(1) "Crime of violence" shall have the same meaning as provided in § 23-1331(4), or a crime under the laws of any other jurisdiction that involved conduct that would constitute a crime of violence if committed in the District of Columbia, or conduct that is substantially similar to that prosecuted as a crime of violence under the District of Columbia Official Code.

(2) "Fugitive from justice" means a person who has:

(A) Fled to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding; or

(B) Escaped from a federal, state, or local prison, jail, halfway house, or detention facility or from the custody of a law enforcement officer.

(July 8, 1932, 47 Stat. 651, ch. 465, § 3; June 29, 1953, 67 Stat. 93, ch. 159, § 204(b); May 21, 1994, D.C. Law 10-119, § 15(b), 41 DCR 1639; Apr. 24, 2007, D.C. Law 16-306, § 223(c), 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 219(b), 56 DCR 7413; June 3, 2011, D.C. Law 18-377, § 13, 58 DCR 1174; Sept. 29, 2012, D.C. Law 19-170, § 3(c), 59 DCR 5691; June 11, 2013, D.C. Law 19-317, §§ 240(a), 304, 60 DCR 2064.)

Section references. — This section is referenced in § 7-2502.03, § 7-2507.06a, § 16-801, § 22-4507, § 22-4508, § 22-4510, § 23-1322, § 24-403, § 24-403.01, and § 24-906.

Effect of amendments.

The 2012 amendment by D.C. Law 19-170, in (a)(6), added "within the past 5 years" and substituted "D.C. Official Code § 16-1001(8), punishable as a misdemeanor, or any similar provision in the law of" for "§ 16-1001, or a substantially similar offense in."

The 2013 amendment by D.C. Law 19-317 added (b)(3); and substituted "not more than the amount set forth in § 22-3571.01" for "not more than $15,000" in (c).

Emergency legislation.

For temporary (90 day) amendment of section, see § 3(c) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary amendment of (a)(6), see § 3(c) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

For temporary (90 days) amendment of this section, see §§ 240(a) and 304 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-170. — See note to § 22-4501.

Legislative history of Law 19-317. — See note to § 22-4502.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Double jeopardy.
Instructions.
Jury trial.
Nature and elements of offenses.
Sentence.
Weight and sufficiency of evidence.

Admissibility of evidence.

Stipulation regarding defendant's prior felony conviction was properly read to the jury because one of the elements of unlawful possession of a firearm by a convicted felon was a prior felony conviction. Nero v. United States, 73 A.3d 153, 2013 D.C. App. LEXIS 497 (2013).

Because the jury found defendant not guilty of assault with a dangerous weapon and possession of a firearm during a crime of violence in the first trial, the government should not have been permitted to introduce evidence that defendant pulled out a weapon during his altercation with the victims when he was retried for possession of a firearm by a felon. Thomas v. United States, 79 A.3d 306, 2013 D.C. App. LEXIS 682 (2013).

Double jeopardy.

Separate sentences for carrying pistol without license, possession of firearm by convicted felon, and unregistered firearm did not violate prohibition against double jeopardy; each crime required proof of element that others did not, in that unregistered firearm required proof firearm was unregistered, unlawful possession of firearm by felon required proof that defendant was convicted felon, and carrying pistol without license required proof that defendant carried weapon. Washington v. U.S., 2012 WL 2050378 (2012).

Instructions.

Defendant was entitled to have his conviction for unlawful possession of a firearm by a convicted felon vacated, because the trial judge erred in responding to the jury's request for clarification of the mens rea elements of the offense, erroneously telling the jury that it could find defendant guilty if defendant knowingly possessed the frame or receiver of a firearm, even if defendant knew nothing else. Myers v. United States, 56 A.3d 1148, 2012 D.C. App. LEXIS 485 (2012).

Jury trial.

Defendant was entitled to a jury trial on a felon-in-possession charge, which carried a maximum penalty of ten years imprisonment under D.C. Code § 22-4503(b); the trial court's failure to obtain a written or oral waiver from defendant before conducting a bench trial on the charge was structural error likely to have an effect on the fairness, integrity or public reputation of the judicial proceedings. Fortune v. United States, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (2013).

Nature and elements of offenses.

That defendant, a convicted felon, was legally unable to register firearms did not require that his convictions of possessing an unregistered firearm be merged with his conviction of unlawfully possessing a firearm after being convicted of a felony, because each crime required proof of a fact which the other did not. Hammond v. United States, 77 A.3d 964, 2013 D.C. App. LEXIS 438 (2013).

Because the jury had to always be informed of the full nature, including each element, of the charged crime, defendant's argument that the trial court should have required the government to prove the unlawful possession of a weapon charge without mention of his felony conviction was flawed, because the stipulation addressed an element of the unlawful possession of a firearm charge, the trial judge did not err in permitting the stipulation to be read to the jury or the prior felony conviction to be mentioned during closing arguments. Williams v. United States, 75 A.3d 217, 2013 D.C. App. LEXIS 598 (2013).

Sentence.

Defendant could be sentenced to consecutive terms for unlawful possession of a firearm, D.C. Code § 22-4503(a)(1), and carrying a pistol without a license (CPWL) outside one's home or business, D.C. Code § 22-4504, because the rule of lenity did not apply; CPWL and unlawful possession of a firearm are separate and distinct offenses, and D.C. Code § 23-112 (2001), which codifies the Blockburger rule, constitutes the legislature's clear intent to provide consecutive sentences for CPWL and possession of an unregistered firearm. Snell v. United States, 68 A.3d 689, 2013 D.C. App. LEXIS 93 (2013).

Weight and sufficiency of evidence.

Evidence was sufficient to prove that defendant had constructive possession of a firearm and boxes of ammunition, all of which were found in a backpack next to her bed, because defendant was the sole occupant of the bedroom during the week prior to the execution of the search warrant, with ample ability to control the backpack and its contents; because the backpack was conspicuously located in her bedroom next to defendant's bed, a juror could reasonably infer that she had the requisite intent to exercise control over the backpack.

Smith v. United States, 55 A.3d 884, 2012 D.C. App. LEXIS 521 (2012).

Defendant was convicted of first-degree burglary, attempted robbery, and unlawfully possessing a firearm after a felony conviction in violation of D.C. Code § 22-4503(a)(2), because he entered the victim's apartment while holding a gun, walked into her bedroom, and demanded money. Fortune v. United States, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (2013).

Evidence was sufficient to prove defendant had constructive possession of two rifles that police found in the trunk of his mother's car, because by his response to her angry inquiry as to why he put them in there—to protect his wife—he effectively admitted doing so. Hammond v. United States, 77 A.3d 964, 2013 D.C. App. LEXIS 438 (2013).

§ 22-4503.01. Unlawful discharge of a firearm.

CASE NOTES

Merger of offenses.

Unlawful possession of ammunition does not merge with unlawful discharge of a firearm, D.C. Code § 22-4503.01, because it is possible to discharge a firearm without possessing the discharged ammunition. Snell v. United States, 68 A.3d 689, 2013 D.C. App. LEXIS 93 (2013).

§ 22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun. A person who violates this subsection shall be subject to the criminal penalties set forth in subsection (a)(1) and (2) of this section.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection, the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c); July 28, 1989, D.C. Law 8-19, § 3(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(c), 37 DCR 24; May 21, 1994, D.C. Law 10-119,§ 15(c), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 302, 41 DCR 2608; May 20, 2009, D.C. Law 17-388, § 2(c), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170, § 3(d), 59 DCR 5691; June 11, 2013, D.C. Law 19-317, §§ 240(b), 309(a), 60 DCR 2064.)

Section references. — This section is referenced in § 7-2507.06a, § 22-2511, § 22-4505, § 22-4513, § 23-1322, § 24-221.06, § 24-261.02, and § 24-467.

Effect of amendments.

The 2012 amendment by D.C. Law 19-170 deleted "without a license issued pursuant to District of Columbia law" following "a pistol" in the first sentence of the introductory language of (a) and in (a)(1).

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than $5,000" in (a)(1), and for "not more than $10,000" in (a)(2); and added (c).

Emergency legislation.

For temporary amendment of (a), see § 3(d) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

For temporary (90 days) amendment of this section, see §§ 240(b) and 309(a) of the Criminal Fine Proportionality Emergency Amendment Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-170. — See note to § 22-4501.

Legislative history of Law 19-317. — See note to § 22-4502.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Admissibility of evidence.

— In general.

Trial court properly denied defendant's motion to suppress a gun and ammunition found on his person, as police had reasonable suspicion sufficient to make a Terry stop based on his unprovoked flight, at night, in a high crime area, after officers indicated that they were investigating recent robberies in the area and wanted to know if he had any weapons on him. Henson v. United States, 55 A.3d 859, 2012 D.C. App. LEXIS 517 (2012).

Because the jury found defendant not guilty of assault with a dangerous weapon and possession of a firearm during a crime of violence in the first trial, the government should not have been permitted to introduce evidence that defendant pulled out a weapon during his altercation with the victims when he was retried for possession of a firearm by a felon. Thomas v. United States, 79 A.3d 306, 2013 D.C. App. LEXIS 682 (2013).

Arrest.

Defendant preserved for appellate review assertion that trial court erroneously precluded him from cross-examining the arresting officer during defendant's suppression hearing in weapons prosecution about a civil suit for false arrest pending against the officer without first hearing a proffer from defendant on the relevance of the proposed cross-examination, where defendant sought trial court's permission to proffer the relevance of the proposed cross-examination once and, although the trial court prefaced its ruling excluding inquiry into the civil suit with the phrase, "Not right now," the trial court made it clear throughout the hearing

that it would not entertain questioning about facts that it considered outside the scope of the issue of consent, even if they related to officer's credibility. Dawkins v. United States, 41 A.3d 1265, 2012 D.C. App. LEXIS 151 (2012).

Trial court erred by denying defendant's motion to suppress the gun and ammunition found in the car because there was no probable cause that defendant "planned to harm anyone" with the baton. Because there was no probable cause to believe that the baton was a "dangerous weapon," there was no probable cause to arrest him for carrying a dangerous weapon, or, a fortiori, possession of a prohibited weapon. Tuckson v. United States, 77 A.3d 357, 2013 D.C. App. LEXIS 648 (2013).

Construction with other statutes.

Defendant was properly convicted of carrying a pistol without a license (CPWL) outside one's home or business because when the District of Columbia Council repealed D.C. Code § 22-4506, it did not intend to abolish the prohibition against carrying pistols on the street, and felony CPWL remained a prosecutable offense even after the Council made it impossible to obtain a license; defendant could have complied with felony CPWL simply by not carrying a pistol on the street, outside his home. Snell v. United States, 68 A.3d 689, 2013 D.C. App. LEXIS 93 (2013).

Dangerous weapon.

Government was not required to prove that defendant intended to use the shotgun and sword as dangerous weapons because the two things had no natural purpose other than to inflict injury. Gorbey v. United States, 54 A.3d 668, 2012 D.C. App. LEXIS 477 (2012).

Defenses.

Retired Metropolitan Police Department officer could not invoke the exception in D.C. Code § 22-4505(b) when charged with carrying a pistol without a license, based on the officer's registration of the subject gun in Maryland, because (1) the exception was read in pari materia with the registration provisions of D.C. Code tit. 7, and (2) those provisions conditioned the officer's gun possession in the District of Columbia (D.C.) on D.C. residency, as registration expired if the officer left D.C., and on the discretion of the D.C. Chief of Police to grant or deny registration. Hargrove v. United States, 55 A.3d 852, 2012 D.C. App. LEXIS 515 (2012).

It was not plain that defendant, in his capacity as an off-duty special conservator of the peace from the State of Virginia, had a Second Amendment right to carry a gun and ammunition in the District of Columbia because defendant did not show a clear or obvious violation of the Second Amendment, either at the time of his trial for carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition, or at the time of his appeal; there is no clear right to carry a firearm outside the home. Thorne v. United States, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012), writ of certiorari denied by 134 S. Ct. 340, 187 L. Ed. 2d 158, 2013 U.S. LEXIS 7170, 82 U.S.L.W. 3185 (U.S. 2013).

Because defendant was neither a law enforcement officer with general authority nor an individual with limited law enforcement authority who was acting within the scope of his authority, he was not considered a law enforcement officer for purposes of D.C. Code § 22-4505 and was not entitled to the exemption under the statute; defendant, who only possessed authority to act in a law enforcement capacity while he was working for his private employer, was not a "law enforcement officer" because outside of specific times when he was working, defendant did not have general police authority or authorization to carry a gun. Thorne v. United States, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012), writ of certiorari denied by 134 S. Ct. 340, 187 L. Ed. 2d 158, 2013 U.S. LEXIS 7170, 82 U.S.L.W. 3185 (U.S. 2013).

Harmless or reversible error.

— Instructions, harmless or reversible error.

Erroneous failure to give a unanimity instruction as to which weapon, if any, was possessed by defendant did not affect his substantial rights or seriously affect fairness of trial on charge of carrying a pistol without a license (CPWL) after having previously been convicted of a felony, as necessary to warrant reversal on plain-error review; trial court gave general unanimity instruction, and, while there were three possible factual scenarios involving different times, potentially different weapons, and different locations, ample evidence supported the most likely basis of conviction, i.e., that defendant carried pistol found in his girlfriend's car. Wynn v. United States, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Trial court should have given a special unanimity instruction regarding which weapon, if any, was possessed by defendant with respect to charge of carrying a pistol without a license (CPWL) after having previously been convicted of a felony, as jury could have found defendant guilty based upon three factual scenarios, each of which involved possession of potentially different weapons, at different times, and in different locations. Wynn v. United States, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Trial court's failure to give jury a special unanimity instruction with regard to which firearm, if any, was carried by defendant would be reviewed only for plain error, on appeal of conviction for carrying a pistol without a li-

cense (CPWL), where defendant did not request a special unanimity instruction. Wynn v. United States, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Elements of offense, instructions.

Although the evidence was sufficient to convict defendant of carrying a pistol without a license in violation of D.C. Code § 22-4504(a), the trial court's instruction to the jury was significantly erroneous so as to satisfy the plain error standard because the trial court failed to instruct the jury that operability was an essential element of the offense; operability of the weapon was an element of the offense to be proven by the government, but the trial court instructed that it was not, and the erroneous instruction took away the government's burden of proof on an essential element of the offense. Nelson v. United States, 55 A.3d 389, 2012 D.C. App. LEXIS 510 (2012).

Merger of offenses.

Defendant's two convictions for possession of a firearm during a crime of violence, under D.C. Code § 22-4504(b), did not merge with the underlying convictions for armed robbery, under D.C. Code §§ 22-2801 and 22-4502, and aggravated assault while armed, under D.C. Code §§ 22-404.01 and 22-4502 because the offenses required different elements of proof. The armed robbery and aggravated assault while armed offenses required proof that defendant was "armed with" or had "readily available" a dangerous weapon, which could, but need not, have been a firearm, while the possession of a firearm during a crime of violence offenses required proof of elements not required by the armed enhancement statute — that is, proof of "possession" of a "firearm." Snowden v. United States, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

Defendant's conviction for carrying a pistol without a license (CPWL) outside one's home or business, D.C. Code § 22-4504, did not merge with his conviction for possession of an unregistered firearm (UF), D.C. Code § 7-2502.01, because CPWL did not require proof that the pistol being carried was unregistered and UF does not require proof that the pistol was being carried, a narrower concept than possession. Snell v. United States, 68 A.3d 689, 2013 D.C. App. LEXIS 93 (2013).

Nature and elements of offenses.

— Crimes of violence, nature and elements of offenses.

Offense of assault with significant bodily injury was not a crime of violence, and thus, defendant should not have been charged with assault with significant bodily injury while armed or with a related count of possessing a firearm during a crime of violence (PFCV), which increased his potential term of imprisonment. Colter v. United States, 37 A.3d 282, 2012 D.C. App. LEXIS 63 (2012), writ of certiorari denied by 133 S. Ct. 554, 184 L. Ed. 2d 360, 2012 U.S. LEXIS 8443, 81 U.S.L.W. 3229 (U.S. 2012).

— In general.

Although the absence of a license is an element the government must prove in felony carrying a pistol without a license (CPWL) prosecutions, the gravamen of the offense of felony CPWL is the act of carrying a pistol outside the home, not the failure to get a license. Snell v. United States, 68 A.3d 689, 2013 D.C. App. LEXIS 93 (2013).

— Operability of weapon, nature and elements of offenses.

There was legally sufficient evidence to show that a pistol was operable because the revolver that the police officers seized from the waist band of defendant's pants was fully loaded; once defendant opened his window and the police officers were able to reach him, defendant announced that he was carrying a gun; Nelson v. United States, 55 A.3d 389, 2012 D.C. App. LEXIS 510 (2012).

Self-defense, generally.

In a criminal trial in which defendant was convicted for assault with a dangerous weapon under D.C. Code § 22-402, possession of a firearm during dangerous offenses under D.C. Code § 22-4504(b), and being a felon in possession of a firearm under 18 U.S.C.S. § 922(g)(1), defendant's argument that the district court improperly instructed the jury with respect to a claim of self-defense failed on appeal because there was no reasonable likelihood that the jury was confused or misled into diluting the government's burden of proof or shifting the burden of proof to defendant based on all the instructions; the district court specifically instructed the jury that the government had to disprove defendant's self-defense claim beyond a reasonable doubt, and it adequately emphasized that the burden of proof did not shift when defendant voluntarily undertook to present a specific defense. United States v. Purvis, 706 F.3d 520, 2013 U.S. App. LEXIS 2867 (D.C. Cir. 2013).

Sentence and punishment.

Separate sentences for carrying pistol without license, possession of firearm by convicted felon, and unregistered firearm did not violate prohibition against double jeopardy; each crime required proof of element that others did not, in that unregistered firearm required proof firearm was unregistered, unlawful possession of firearm by felon required proof that defendant was convicted felon, and carrying pistol without license required proof that defendant carried

weapon. Washington v. U.S., 2012 WL 2050378 (2012).

Defendant could be sentenced to consecutive terms for unlawful possession of a firearm, D.C. Code § 22-4503(a)(1), and carrying a pistol without a license (CPWL) outside one's home or business, D.C. Code § 22-4504, because the rule of lenity did not apply; CPWL and unlawful possession of a firearm are separate and distinct offenses, and D.C. Code § 23-112 (2001), which codifies the Blockburger rule, constitutes the legislature's clear intent to provide consecutive sentences for CPWL and possession of an unregistered firearm. Snell v. United States, 68 A.3d 689, 2013 D.C. App. LEXIS 93 (2013).

Weight and sufficiency of evidence.

— Carrying weapon, weight and sufficiency of evidence.

Evidence was insufficient to convict defendant of carrying a pistol without a license in violation of D.C. Code § 22-4504(a), as it did not establish that the weapon he carried was a pistol as defined by former D.C. Code § 22-4501(a), i.e., had a barrel less than 12 inches long. Jenkins v. United States, 80 A.3d 978, 2013 D.C. App. LEXIS 796 (2013).

— Operability of weapon, weight and sufficiency of evidence.

Evidence supported a finding, on charge of carrying a pistol without a license (CPWL) after having previously been convicted of a felony, that handgun at issue was operable; although a bullet was stuck in barrel when one officer recovered handgun, officer officers merely pushed it out, and the weapon was successfully test-fired thereafter. Wynn v. United States, 48 A.3d 181, 2012 D.C. App. LEXIS 321 (2012).

Applied in Harrison v. United States, 76 A.3d 826, 2013 D.C. App. LEXIS 524 (2013), writ of certiorari denied by 2014 U.S. LEXIS 1812, 82 U.S.L.W. 3528 (U.S. Mar. 10, 2014).

§ 22-4505. Exceptions to § 22-4504.

(a) The provisions of §§ 22-4504(a) and 22-4504(a-1) shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law enforcement officers, including special agents of the Office of Tax and Revenue, authorized in writing by the Deputy Chief Financial Officer for the Office of Tax and Revenue to carry a firearm while engaged in the performance of their official duties, and criminal investigators of the Office of the Inspector General, designated in writing by the Inspector General, while engaged in the performance of their official duties;

(2) Special police officers and campus police officers who carry a firearm in accordance with D.C. Official Code § 5-129.02, and rules promulgated pursuant to that section;

(3) Members of the Army, Navy, Air Force, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States; provided, that such members are at or are going to or from their places of assembly or target practice;

(4) Officers or employees of the United States duly authorized to carry a concealed pistol;

(5) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his or her possession, using, or carrying a pistol in the usual or ordinary course of such business; and

(6) Any person while carrying a pistol, transported in accordance with § 22-4504.02, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business or in moving goods from one place of abode or business to another, or to or from any lawful recreational firearm-related activity.

(b) The provisions of § 22-4504(a) with respect to pistols shall not apply to

a police officer who has retired from the Metropolitan Police Department, if the police officer has registered a pistol and it is concealed on or about the police officer.

(c) For the purposes of subsection (a)(6) of this section, the term "recreational firearm-related activity" includes a firearms training and safety class.

(July 8, 1932, 47 Stat. 651, ch. 465, § 5; May 7, 1993, D.C. Law 9-266, § 3, 39 DCR 5676; May 21, 1994, D.C. Law 10-119, § 15(d), 41 DCR 1639; Mar. 26, 1999, D.C. Law 12-190, § 3, 45 DCR 7814; June 9, 2001, D.C. Law 13-305,§ 408, 48 DCR 334; June 12, 2003, D.C. Law 14-310, § 9, 50 DCR 1092; May 20, 2009, D.C. Law 17-388, § 2(e), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170, § 3(e), 59 DCR 5691.)

Section references. — This section is referenced in § 6-223.

Effect of amendments.

The 2012 amendment by D.C. Law 19-170 deleted "to § 22-4504" at the end of the section heading; rewrote (a); substituted "§ 22-4504(a)" for "§ 22-4504" in (b); added (c); and made related changes.

Emergency legislation.

For temporary amendment of section, see § 3(e) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

Legislative history of Law 19-170. — See note to § 22-4501.

CASE NOTES

Analysis

Construction with other law.
Evidence held insufficient.

Construction with other law.

Retired Metropolitan Police Department officer could not invoke the exception in D.C. Code § 22-4505(b) when charged with carrying a pistol without a license, based on the officer's registration of the subject gun in Maryland, because (1) the exception was read in pari materia with the registration provisions of D.C. Code tit. 7, and (2) those provisions conditioned the officer's gun possession in the District of Columbia (D.C.) on D.C. residency, as registration expired if the officer left D.C., and on the discretion of the D.C. Chief of Police to grant or deny registration. Hargrove v. United States, 55 A.3d 852, 2012 D.C. App. LEXIS 515 (2012).

Evidence held insufficient.

Because defendant was neither a law enforcement officer with general authority nor an individual with limited law enforcement authority who was acting within the scope of his authority, he was not considered a law enforcement officer for purposes of D.C. Code § 22-4505 and was not entitled to the exemption under the statute; defendant, who only possessed authority to act in a law enforcement capacity while he was working for his private employer, was not a "law enforcement officer" because outside of specific times when he was working, defendant did not have general police authority or authorization to carry a gun. Thorne v. United States, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012), writ of certiorari denied by 134 S. Ct. 340, 187 L. Ed. 2d 158, 2013 U.S. LEXIS 7170, 82 U.S.L.W. 3185 (U.S. 2013).

It was not plain that defendant, in his capacity as an off-duty special conservator of the peace from the State of Virginia, had a Second Amendment right to carry a gun and ammunition in the District of Columbia because defendant did not show a clear or obvious violation of the Second Amendment, either at the time of his trial for carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition, or at the time of his appeal; there is no clear right to carry a firearm outside the home. Thorne v. United States, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012), writ of certiorari denied by 134 S. Ct. 340, 187 L. Ed. 2d 158, 2013 U.S. LEXIS 7170, 82 U.S.L.W. 3185 (U.S. 2013).

§ 22-4508. Transfers of firearms regulated.

No seller shall within the District of Columbia deliver a firearm to the purchaser thereof until 10 days shall have elapsed from the date of the

purchase thereof, except in the case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law enforcement officers, and, when delivered, said firearm shall be transported in accordance with § 22-4504.02. At the time of purchase, the purchaser shall sign in duplicate and deliver to the seller a statement containing his or her full name, address, occupation, date and place of birth, the date of purchase, the caliber, make, model, and manufacturer's number of the firearm and a statement that the purchaser is not forbidden by § 22-4503 to possess a firearm. The seller shall, within 6 hours after purchase, sign and attach his or her address and deliver one copy to such person or persons as the Chief of Police of the District of Columbia may designate, and shall retain the other copy for 6 years. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in § 22-4514 as entitled to possess the same, and then only after permission to make such sale has been obtained from the Chief of Police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers.

(July 8, 1932, 47 Stat. 652, ch. 465, § 8; June 29, 1953, 67 Stat. 94, ch. 159, § 204(e); May 21, 1994, D.C. Law 10-119, § 15(g), 41 DCR 1639; May 20, 2009, D.C. Law 17-388, § 2(g), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170, § 3(f), 59 DCR 5691.)

Effect of amendments.

The 2012 amendment by D.C. Law 19-170 in the first sentence, substituted "date of the" for "time of the application for the"; in the second sentence, substituted "time of purchase" for "time of applying for the purchase of a firearm," substituted "date and" for "color," substituted "date of purchase" for "date and hour of application," deleted "to be purchased" following "of the firearm,"; and substituted "purchase" for "such application" in the third sentence.

Emergency legislation.

For temporary (90 day) amendment of section, see § 3(f) of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012, 59 DCR 5116).

For temporary (90 day) amendment of section, see § 3(f) of the Firearms Amendments Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-394, July 18, 2012, 59 DCR 8694).

For temporary amendment of section, see § 3(f) of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

Legislative history of Law 19-170. — See note to § 22-4501.

§ 22-4514. Possession of certain dangerous weapons prohibited; exceptions.

(a) No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, knuckles, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, sand club, sandbag, switchblade knife, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms; provided, however, that machine guns, or sawed-off shotgun, knuckles, and blackjacks may be possessed by the members of the Army, Navy, Air Force, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law enforcement officers, including any designated civilian employee of the Metropolitan Police Department, or officers

or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under § 22-4510.

(b) No person shall within the District of Columbia possess, with intent to use unlawfully against another, an imitation pistol, or a dagger, dirk, razor, stiletto, or knife with a blade longer than 3 inches, or other dangerous weapon.

(c) Whoever violates this section shall be punished as provided in § 22-4515 unless the violation occurs after such person has been convicted in the District of Columbia of a violation of this section, or of a felony, either in the District of Columbia or in another jurisdiction, in which case such person shall be imprisoned for not more than 10 years.

(d) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 8, 1932, 47 Stat. 654, ch. 465, § 14; June 29, 1953, 67 Stat. 94, ch. 159, § 204(h); May 21, 1994, D.C. Law 10-119, § 15(k), 41 DCR 1639; June 12, 1999, D.C. Law 12-284, § 6, 46 DCR 1328; May 15, 2009, D.C. Law 17-390, § 3(b), 55 DCR 11030; June 11, 2013, D.C. Law 19-317, § 309(b), 60 DCR 2064.)

Section references. — This section is referenced in § 10-503.26, § 16-2301, § 22-951, § 22-4508, § 22-4510, and § 22-4513.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (d).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 309(b) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-4502.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Attempt.
Knife.
Pepper spray.
Search and seizure.
Weight and sufficiency of evidence.

Attempt.

Although remand for a retrial was necessary for the trial court to consider whether defendant's right to confrontation was violated, the evidence was sufficient to support defendant's conviction for attempted possession of a prohibited weapon, in violation of D.C. Code §§ 22-1803 and 22-4514(b), because (1) a police officer testified that defendant's step-sibling, while in an excited state, told the officer that defendant came to the step-sibling, while holding a knife, and told the step-sibling that the step-sibling looked like the step-sibling had been selling drugs and needed a haircut, and that defendant then tried to cut the step-sibling's hair; (2) the officer testified as to the officer's observations that both defendant and the step-sibling had visible injuries and bloodstained clothes and that there was a trail of blood inside the duplex unit which defendant and the step-sibling shared; and (3) there was photographic evidence. Best v. United States, 66 A.3d 1013, 2013 D.C. App. LEXIS 276 (2013).

Knife.

Defendant could not reasonably claim that he had no notice that his conduct of carrying a "trench knife" was prohibited; thus, defendant was properly convicted under D.C. Code § 22-4514. Thompson v. United States, 59 A.3d 961, 2013 D.C. App. LEXIS 12 (2013).

Pepper spray.

Vacatur of a conviction for attempted possession of a prohibited weapon, in violation of D.C. Code §§ 22-1803 and 22-4514(b), was appropriate because the evidence was insufficient to support a finding that pepper spray was a dangerous weapon within the meaning of attempted possession of a prohibited weapon un-

der D.C. Code §§ 22-1803 and 22-4514(b). Jones v. United States, 67 A.3d 547, 2013 D.C. App. LEXIS 284 (2013).

Search and seizure.

Trial court erred by denying defendant's motion to suppress the gun and ammunition found in the car because there was no probable cause that defendant "planned to harm anyone" with the baton. Because there was no probable cause to believe that the baton was a "dangerous weapon," there was no probable cause to arrest him for carrying a dangerous weapon, or, a fortiori, possession of a prohibited weapon. Tuckson v. United States, 77 A.3d 357, 2013 D.C. App. LEXIS 648 (2013).

Weight and sufficiency of evidence.

Evidence was sufficient to prove that defendant had constructive possession of a firearm and boxes of ammunition, all of which were found in a backpack next to her bed, because defendant was the sole occupant of the bedroom during the week prior to the execution of the search warrant, with ample ability to control the backpack and its contents; because the backpack was conspicuously located in her bedroom next to defendant's bed, a juror could reasonably infer that she had the requisite intent to exercise control over the backpack. Smith v. United States, 55 A.3d 884, 2012 D.C. App. LEXIS 521 (2012).

§ 22-4515. Penalties.

Any violation of any provision of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 1 year, or both.

(July 8, 1932, 47 Stat. 654, ch. 465, § 15; June 11, 2013, D.C. Law 19-317, § 240(c), 60 DCR 2064.)

Section references. — This section is referenced in § 22-4504 and § 22-4514.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than $1,000".

Emergency legislation.

For temporary (90 days) amendment of this section, see § 240(c) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-4502.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Applied in Jones v. United States, 67 A.3d 547, 2013 D.C. App. LEXIS 284 (2013).

§ 22-4515a. Manufacture, transfer, use, possession, or transportation of Molotov cocktails, or other explosives for unlawful purposes, prohibited; definitions; penalties.

(a) No person shall within the District of Columbia manufacture, transfer, use, possess, or transport a molotov cocktail. As used in this subsection, the term "molotov cocktail" means: (1) a breakable container containing flammable liquid and having a wick or a similar device capable of being ignited; or (2) any other device designed to explode or produce uncontained combustion upon impact; but such term does not include a device lawfully and commercially manufactured primarily for the purpose of illumination, construction work, or other lawful purpose.

(b) No person shall manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained

combustion, with the intent that the same may be used unlawfully against any person or property.

(c) No person shall, during a state of emergency in the District of Columbia declared by the Mayor pursuant to law, or during a situation in the District of Columbia concerning which the President has invoked any provision of Chapter 15 of Title 10, United States Code, manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, except at his or her residence or place of business.

(d) Whoever violates this section shall: (1) for the first offense, be sentenced to a term of imprisonment of not less than 1 and not more than 5 years; (2) for the second offense, be sentenced to a term of imprisonment of not less than 3 and not more than 15 years; and (3) for the third or subsequent offense, be sentenced to a term of imprisonment of not less than 5 years and not more than 30 years. In the case of a person convicted of a third or subsequent violation of this section, Chapter 402 of Title 18, United States Code (Federal Youth Corrections Act) shall not apply. For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the third or subsequent conviction for an offense defined by this section is a Class A felony.

(e) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 8, 1932, 47 Stat. 654, ch. 465, § 15A; July 29, 1970, 84 Stat. 603, Pub. L. 91-358, title II, § 209; May 21, 1994, D.C. Law 10-119, § 15(l), 41 DCR 1639; June 8, 2001, D.C. Law 13-302, § 6(b), 47 DCR 7249; June 11, 2013, D.C. Law 19-317, § 309(c), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (e).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 309(c) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-4502.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

TITLE 23. CRIMINAL PROCEDURE.

Chapter 1. General Provisions.

§ 23-101. Conduct of prosecutions.

CASE NOTES

Applied in In re Taylor, 73 A.3d 85, 2013 D.C. App. LEXIS 435 (2013); Porter v. Jones, 2011 D.C. Super. LEXIS 17 (Aug. 9, 2011).

LAW REVIEWS AND JOURNAL COMMENTARIES

District of Columbia Criminal Procedure Survey. 34 Cath.U.L.Rev. 1293, (1985).

"The District of Columbia Revitalization Act and Criminal Justice: The Federal Government's Assault on Local Authority." 4 The District of Columbia Law Review 77 (1998).

§ 23-105. Challenges to jurors.

LAW REVIEWS AND JOURNAL COMMENTARIES

Trial Court Discretion in Conducting the Voir Dire Subjected to More Stringent Scrutiny: Cordero v. United States. 33 Cath.U.L.Rev. 1121, (1984).

§ 23-110. Remedies on motion attacking sentence.

Section references. — This section is referenced in § 11-2601, § 22-4132, and § 22-4133.

CASE NOTES

Analysis

Counsel for accused.

— Adequacy of representation by counsel for accused.

Defendant was not denied effective assistance of counsel due to appellate counsel's purported failure to argue on direct appeal that trial counsel failed to effectively litigate his motion to suppress evidence, based in large part on alleged suggestive identification of him at crime scene, where trial counsel preserved suppression issues for appeal and appellate counsel advanced them on appeal, and appel-

late court rejected defendant's claims on merits. Graham v. Bledsoe, 841 F.Supp.2d 134, 2012 U.S. Dist. LEXIS 9379 (2012), appeal dismissed by 2012 U.S. App. LEXIS 21830 (D.C. Cir. Oct. 18, 2012).

Because the trial court erred in finding that trial counsel made a strategic choice not to consult an expert witness, since trial counsel's failure to consult an expert fell below professional norms as there was a reasonable probability that competent counsel would have called a narcotics expert at trial and such expert testimony, in conjunction with other evidence presented at trial, would have created a reasonable doubt that a prisoner was guilty of unlawful distribution of heroin, the judgment had to be reversed and the case had to be remanded for a new trial. Young v. United States, 56 A.3d 1184, 2012 D.C. App. LEXIS 626 (2012).

Plea agreement.

Inmate's motion to vacate his conviction under D.C. Code § 23-110 was remanded for an evidentiary hearing under D.C. Code § 17-306 on the prejudice prong of his ineffective assistance claim as the issue of whether the inmate showed a reasonable probability of a different outcome had counsel properly advised him of a plea offer since the plea offer was wired was not raised until after the evidentiary record was closed. Benitez v. United States, 60 A.3d 1230, 2013 D.C. App. LEXIS 47 (2013).

— Post-trial motions, counsel for accused.

Murder defendant was not entitled to evidentiary hearing on claim raised in his motion for post-conviction relief that his trial counsel had rendered ineffective assistance by failing to file a notice of appeal as he had requested her to do, notwithstanding government's concession that defendant was entitled to such a hearing, as it was undisputed that, as part of his written plea agreement with the prosecution, he waived his right to appeal anything other than the legality of sentence imposed on him, sentence imposed on defendant was not in excess of punishment authorized by statute and defendant had not claimed to the contrary, defendant did not raise ineffective assistance claim until almost 13 years after he was sentenced, and even if defendant's allegation was true, counsel's affidavit, stating that if defendant had directed her to file a notice of appeal, she would have advised him that he had given up right to appeal except from imposition of an illegal sentence, explained what her only plausible response to such a direction would have been. Stewart v. United States, 37 A.3d 870, 2012 D.C. App. LEXIS 7 (2012).

Evidence.

— Newly discovered evidence.

Even if victim's letter to trial court constituted a recantation and her recantation was credited, defendant, who had been convicted of assault with intent to commit first-degree sexual abuse (AWICSA), failed to show that a manifest injustice occurred, as necessary to warrant vacation of his sentence, or that he was actually innocent, as necessary to warrant relief under Innocence Protection Act (IPA); evidentiary value of victim's purported recantation was low, and would have, at best, been used to impeach her initial account of the events that a rape or attempted rape had occurred, defendant did not dispute that he seriously assaulted victim with a knife, nor could he, given the extent of her wounds as reflected in the medical records, victim's initial account of what happened continued to carry weight, especially in light of its consistency with the other evidence, and a paramedic recalled that while victim was receiving treatment, she reported having been raped. Meade v. United States, 48 A.3d 761, 2012 D.C. App. LEXIS 322 (2012).

— Suppression of or failure to disclose evidence.

Where police officers' testimony, and the inferences reasonably drawn from it, supported the trial court's findings that as a prisoner was being stopped, he looked up and, upon seeing other officers arrive just outside the windowed restaurant, immediately retreated into the restaurant and discarded a brown paper in his possession, the officers retrieved the paper with its ten zip lock bags, and once both suspects had been stopped and the officers identified them as the participants of the exchange, they were placed under arrest, there was probable cause and the prisoner was not entitled to have evidence suppressed; thus, the prisoner was not entitled to relief based on counsel's failure to move to suppress evidence. Young v. United States, 56 A.3d 1184, 2012 D.C. App. LEXIS 626 (2012).

Habeas corpus.

— Federal jurisdiction, habeas corpus.

Because District of Columbia Code provision governing remedies on motion attacking sentence does not provide a remedy for claims of ineffective assistance of appellate counsel, a federal district court may review a federal habeas petition asserting ineffective assistance of appellate counsel after the petitioner has moved to recall the mandate in the District of Columbia Court of Appeals. Sanders v. Caraway, 2012 WL 1632862 (2012).

Review.

— Timing, review.

Appellant showed good reason for his failure to move to recall the mandate at an earlier date because he did not receive effective representa-

tion of counsel regarding his Apprendi claim; appellant's attorneys acted in violation of either their express instructions or their implicit duty to devote reasonable efforts to appellant's representation, while appellant made extraordinary efforts to obtain a resolution of his Apprendi claim. Long v. United States, 79 A.3d 310, 2013 D.C. App. LEXIS 684 (2013).

Sentencing and punishment.

Appellate counsel's failure to "reargue" the sufficiency of the evidence supporting defendant's upheld convictions and to challenge the imposition of consecutive sentences for armed robbery and armed burglary was not objectively unreasonable, as required to support defendant's ineffective assistance claim, after the District of Columbia Court of Appeals remanded defendant's case for the limited purpose of correcting the improperly imposed enhancements to his sentence; such arguments would have been outside the scope of the remand, and under the mandate rule, the inferior court had no power or authority to deviate from the mandate issued by the appellate court. Sanders v. Caraway, 2012 WL 1632862 (2012).

Appellant established that he was prejudiced by a plain Apprendi error because reasonable minds could have disagreed about whether the murder was especially heinous, atrocious, or cruel; the pre-meditated murder was committed in revenge against the perpetrator of an earlier crime, and the crime was not clearly within the class of murders discussed by the Committee on the Judiciary when the Council of the District of Columbia enacted its life without possibility of parole statute. Long v. United States, 79 A.3d 310, 2013 D.C. App. LEXIS 684 (2013).

Public reputation of judicial proceedings would suffer if appellant's sentence was allowed to stand because the jury had not made findings coextensive with any of the three aggravating factors on which the trial could based the imposition of life without possibility of parole. Long v. United States, 79 A.3d 310, 2013 D.C. App. LEXIS 684 (2013).

Applied in Longus v. United States, 52 A.3d 836, 2012 D.C. App. LEXIS 476 (2012).

LAW REVIEWS AND JOURNAL COMMENTARIES

Habeas Relief For State Prisoners, 87 Georgetown Law Journal 1842.

§ 23-112. Consecutive and concurrent sentences.

CASE NOTES

Construction and application.

Defendant could be sentenced to consecutive terms for unlawful possession of a firearm, D.C. Code § 22-4503(a)(1), and carrying a pistol without a license (CPWL) outside one's home or business, D.C. Code § 22-4504, because the rule of lenity did not apply; CPWL and unlawful possession of a firearm are separate and distinct offenses, and D.C. Code § 23-112 (2001), which codifies the Blockburger rule, constitutes the legislature's clear intent to provide consecutive sentences for CPWL and possession of an unregistered firearm. Snell v. United States, 68 A.3d 689, 2013 D.C. App. LEXIS 93 (2013).

In the absence of legislative intent to prohibit consecutive sentences for various firearms offenses, the court of appeals applies the District of Columbia Council's general intent to sentence consecutively as embodied in D.C. Code § 23-112. Snell v. United States, 68 A.3d 689, 2013 D.C. App. LEXIS 93 (2013).

Applied in Snowden v. United States, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

§ 23-113. Limitations on actions for criminal violations.

Section references. — This section is referenced in § 5-113.31 and § 22-3227.07.

CASE NOTES

Welfare fraud.

Extension of statute of limitations for sexual abuse effected by Felony Sexual Assault Act, as applied to prosecution of defendant for his first offense, did not violate the Ex Post Facto Clause; prior to expiration of six-year period set forth in former statute of limitations, statute was amended to increase limitations period to 15 years, statute of limitations for defendant's sexual abuse charge was extended before it had

expired, and extension of limitations period neither aggravated a crime nor made it greater than it was, since defendant was never free from prosecution. Thomas v. U.S., 2012 WL 1207422 (2012).

CHAPTER 5. WARRANTS AND ARRESTS.

Subchapter II. Search Warrants.

§ 23-521. Nature and issuance of search warrants.

Section references. — This section is referenced in § 1-301.89a, § 23-522, § 23-523, and § 23-524.

CASE NOTES

Time of execution.

Reasonable police officer could have believed that executing nighttime search without knocking did not violate Fourth Amendment, and thus officers who did execute such warrant were entitled to qualified immunity in arrestees' § 1983 action, where there was probable cause to believe that person who was suspected of committing murder lived at residence being searched, officer had some reason to think that such person would be in possession of weapon listed in warrant, and officer had reasonable grounds to believe that such person was easily provoked to violence and that, once provoked, would not be inclined to back down. Youngbey v. March, 676 F.3d 1114, 2012 U.S. App. LEXIS 7630 (C.A.D.C. 2012).

Issue of whether police officers were entitled to qualified immunity in civil rights action under Fourth Amendment for planning and conducting 4:00 a.m. search on warrant that did not authorize nighttime search and breaking and entering into plaintiffs' home without knocking and announcing their presence turned on question of law, and thus Court of Appeals had jurisdiction to conduct de novo review of trial court's denial of qualified immunity as "final decision," since officers did not contest that they did not knock and announce before entering into plaintiffs' home and there was no dispute that officers executed search warrant during nighttime. Youngbey v. March, 676 F.3d 1114, 2012 U.S. App. LEXIS 7630 (C.A.D.C. 2012).

Subchapter III. Wire Interception and Interception of Oral Communications.

§ 23-542. Interception, disclosure, and use of wire or oral communications prohibited.

(a) Except as otherwise specifically provided in this subchapter, any person who in the District of Columbia —

(1) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire or oral communication;

(2) willfully discloses or endeavors to disclose to any other person the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; or

(3) willfully uses or endeavors to use the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire or oral communication;

shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than five years, or both; except that paragraphs (2) and (3) of this subsection shall not apply to the contents of any wire or oral communication, or evidence derived therefrom, that has become common knowledge or public information.

(b) It shall not be unlawful under this section for —

(1) an operator of a switchboard, or an officer, agent, or employee of a communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication, in the normal course of his employment while engaged in any activity which is a necessary incident to the rendering of his service or to the protection of the rights or property of the carrier of such communication, or to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, under this subchapter, is authorized to intercept a wire or oral communication, but no communication common carrier shall utilize service observing or random monitoring except for mechanical or service quality control checks;

(2) a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception; or

(3) a person not acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States, any State, or the District of Columbia, or for the purpose of committing any other injurious act.

(July 29, 1970, 84 Stat. 617, Pub. L. 91-358, title II, § 210(a); June 11, 2013, D.C. Law 19-317, § 283(a), 60 DCR 2064.)

Section references. — This section is referenced in § 23-544 and § 23-556.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than $10,000" in (a).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 283(a) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was

assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 23-543. Possession, sale, distribution, manufacture, assembly, and advertising of wire or oral communication intercepting devices prohibited.

(a) Except as otherwise specifically provided in subsection (b) of this section, any person who in the District of Columbia —

(1) willfully possesses, sells, distributes, manufactures, or assembles an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(2) willfully places in any newspaper, magazine, handbill, or other publication any advertisement of —

(A) any intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(B) any intercepting device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of a wire or oral communication;

shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than five years, or both.

(b) It shall not be unlawful under this section for —

(1) a communication common carrier or an officer, agent, or employee of, or a person under contract with a communication common carrier, in the usual course of the communication common carrier's business; or

(2) a person under contract with the Government of the United States, a State or a political subdivision thereof, or the District of Columbia, or an officer, agent, or employee of the Government of the United States, a State or a political subdivision thereof, or the District of Columbia;

to possess, sell, distribute, manufacture or assemble, or advertise any intercepting device, while acting in furtherance of the appropriate activities of the United States, a State or political subdivision thereof, the District of Columbia, or a communication common carrier.

(July 29, 1970, 84 Stat. 618, Pub. L. 91-358, title II, § 210(a); June 11, 2013, D.C. Law 19-317, § 283(b), 60 DCR 2064.)

Section references. — This section is referenced in § 23-544 and § 23-556.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than $10,000" in (a).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 283(b) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 23-542.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter V. Arrest Without Warrant.

§ 23-581. Arrests without warrant by law enforcement officers.

(a)(1) A law enforcement officer may arrest, without a warrant having previously been issued therefor —

(A) a person who he has probable cause to believe has committed or is committing a felony;

(B) a person who he has probable cause to believe has committed or is committing an offense in his presence;

(C) a person who he has probable cause to believe has committed or is about to commit any offense listed in paragraph (2) and, unless immediately arrested, may not be apprehended, may cause injury to others, or may tamper with, dispose of, or destroy evidence; and

(D) a person whom he has probable cause to believe has committed any offense which is listed in paragraph (3) of this section, if the officer has reasonable grounds to believe that, unless the person is immediately arrested, reliable evidence of alcohol or drug use may become unavailable or the person may cause personal injury or property damage.

(2) The offenses referred to in subparagraph (C) of paragraph (1) are the following:

(A) The following offenses specified in the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, and listed in the following table:

Offense:	**Specified in —**
Assault	section 806 (D.C. Code, sec. 22-404).
Unlawful entry	section 824 (D.C. Code, sec. 22-3302).
Malicious burning, destruction or injury of another's property	section 848 (D.C. Code, sec. 22-303).

(B) The following offense specified in the Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; 53 DCR 8610):

Offense:	**Specified in —**
Voyeurism	section 105 (D.C. Code, sec. 22-3531).

(C) The following offenses specified in the District of Columbia Theft and White Collar Crimes Act of 1982, and listed in the following table:

Offense:	**Specified in —**
Theft of property valued less than $250	section 111 [D.C. Official Code, § 22-3211].
Receiving stolen property	section 132 [D.C. Official Code, § 22-3232].
Shoplifting	section 113 [D.C. Official Code, § 22-3213].

(D) Attempts to commit the following offenses specified in the Act and listed in the following table:

Offense:	**Specified in —**
Theft of property valued in excess of $250	section 111 [D.C. Official Code, § 22-3211].

Offense:	Specified in —
Unauthorized use of vehicles	section 115 [D.C. Official Code, § 22-3215].

(E) The following offenses specified in the Illegal Dumping Enforcement Act of 1994 [Chapter 9 of Title 8], and listed in the following table:

Offense:	Specified in —
Unauthorized Disposal of Solid Waste	Section 3. [D.C. Official Code, § 8-902]

(F) The following offenses specified in section 113.7 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 113.7).

Offense:	Specified in —
Illegal construction	section 113.7 (12A DCMR § 113.7)

(3) The offenses which are referred to in paragraph (1)(D) of this section are the following offenses specified in the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.01 et seq.), and listed in the following table:

Offense:	Specified in —
Aggravated reckless driving	section 9(b-1) (D.C. Official Code § 50-2201.04(b-1))
Fleeing from the scene of an accident	section 10(a) (D.C. Official Code § 50-2201.05(a))
Operating or physically controlling a vehicle when under the influence of intoxicating liquor or drugs, when operating ability is impaired by intoxicating liquor, or when the operator's blood, breath, or urine contains the amount of alcohol which is prohibited by section 10(b)	section 10(b) (D.C. Official Code § 50-2201.05(b))
Operating a motor vehicle when the operator's permit is revoked or suspended	section 13(e) (D.C. Official Code § 50-1403.01(e)).

(a-1) A law enforcement officer may arrest a person without an arrest warrant if the officer has probable cause to believe the person has committed an intrafamily offense as provided in section 16-1031(a).

(a-2) A law enforcement officer may arrest a person without an arrest warrant if the officer has probable cause to believe the person has committed an offense as provided in Chapter 23 of Title 22.

(a-3) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed an offense as provided in sections 22-3312.01, 22-3312.02, and 22-3312.03.

(a-4) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of unlawful entry of a motor vehicle as provided in [§ 22-1341].

(a-5) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of tampering with a detection device as provided in [§ 22-1211].

(a-6) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of engaging in an unlawful protest targeting a residence as provided in [§ 22-2752].

(a-7) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of

misdemeanor sexual abuse, misdemeanor sexual abuse of a child or minor, or lewd, indecent, or obscene acts, or sexual proposal to a minor, as provided in §§ 22-3006, 22-3010.01, and 22-1312.

(a-8) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of stalking as provided in § 22-3133.

(a-9) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of presenting a fraudulent identification document for the purpose of entering an establishment possessing an on-premises retailer's license, an Arena C/X license, or a temporary license as provided in § 25-1002(b)(2).

(b) A law enforcement officer may, even if his jurisdiction does not extend beyond the District of Columbia, continue beyond the District, if necessary, a pursuit commenced within the District of a person who has committed an offense or who he has probable cause to believe has committed or is committing a felony, and may arrest that person in any State the laws of which contain provisions equivalent to those of section 23-901.

(July 29, 1970, 84 Stat. 629, Pub. L. 91-358, title II, § 210(a); Dec. 1, 1982, D.C. Law 4-164, § 601(g), 29 DCR 3976; Aug. 2, 1983, D.C. Law 5-24, § 4, 30 DCR 3341; Apr. 30, 1988, D.C. Law 7-104, § 7(d), 35 DCR 147; April 30, 1990, D.C. Law 8-261, § 3, 37 DCR 5001; May 5, 1992, D.C. Law 9-96, § 5, 38 DCR 7274; Nov. 17, 1993, D.C. Law 10-54, § 8, 40 DCR 5450; Feb. 5, 1994, D.C. Law 10-68, § 55(a), 40 DCR 6311; May 20, 1994, D.C. Law 10-117, § 8(c), 41 DCR 524; June 12, 2001, D.C. Law 13-309, § 3, 48 DCR 1613; Mar. 13, 2004, D.C. Law 15-105, § 93, 51 DCR 881; Oct. 18, 2005, D.C. Law 16-24,§ 3, 52 DCR 8080; Dec. 10, 2009, D.C. Law 18-88, § 222, 56 DCR 7413; May 26, 2011, D.C. Law 18-374, § 4, 58 DCR 715; June 3, 2011, D.C. Law 18-377,§ 15, 58 DCR 1174; June 8, 2013, D.C. Law 19-316, § 5, 60 DCR 1713; June 19, 2013, D.C. Law 19-320, § 202, 60 DCR 3390.)

Section references. — This section is referenced in § 23-524 and § 23-582.

Effect of amendments.

The 2013 amendment by D.C. Law 19-316 substituted "Aggravated reckless driving .....section 9(b-1) of the District of Columbia Traffic Act, 1925, approved March 3, 1925, (43 Stat. 1123; D.C. Official Code § 50-2201.04(b-1)" for "Reckless driving .....section 9(b) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1123; D.C. Official Code § 50-2201.04(b)" in the table in (a)(3).

The 2013 amendment by D.C. Law 19-320 substituted "misdemeanor sexual abuse, misdemeanor sexual abuse of a child or minor, or lewd, indecent, or obscene acts, or sexual proposal to a minor, as provided in §§ 22-3006, 22-3010.01, and 22-1312" for "misdemeanor sexual abuse or misdemeanor sexual abuse of a child or minor as provided in sections 22-3006 and 22-3010.01" in (a-7); and added (a-8) and (a-9).

Emergency legislation.

For temporary amendment of (a-7) and addition of (a-8) and (a-9), see § 202 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

For temporary (90 days) amendment of this section, see § 202 of the Omnibus Criminal Code Amendment Congressional Review Emergency Act of 2013 (D.C. Act 20-44, April 1, 2013, 60 DCR 5381, 20 DCSTAT 1281).

For temporary (90 days) amendment of this section, see § 5 of the Reckless Driving Emergency Act of 2013 (D.C. Act 20-75, May 23, 2013, 60 DCR 7597, 20 DCSTAT 1428).

Legislative history of Law 19-316. — Law 19-316, the "Reckless Driving Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-823. The Bill was adopted on first and second readings on Nov. 1, 2012, and Nov 15, 2012, respectively. Signed by the Mayor on Jan. 22, 2013, it was assigned Act No. 19-630

and transmitted to Congress for its review. D.C. Law 19-316 became effective on June 8, 2013.

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

Editor's notes. — Section 8 of D.C. Law 19-316 provided that the act shall apply as of June 1, 2013.

CASE NOTES

Seizure incident to arrest.

Searches which were conducted by county jails as standard part of intake process, and which were invasive but did not include any touching of unclothed areas by inspecting officer, struck reasonable balance between inmate privacy and needs of the institutions; Fourth and Fourteenth Amendments did not require that some detainees be exempt from such procedures absent reasonable suspicion of concealed weapon or other contraband. Florence v. Board of Chosen Freeholders of County of Burlington, 132 S.Ct. 1510, 2012 U.S. LEXIS 2712 (2012).

CHAPTER 7. EXTRADITION AND FUGITIVES FROM JUSTICE.

§ 23-703. Failure to appear.

Any person released pursuant to section 23-702 who fails to appear as required shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for not more than five years, or both.

(July 29, 1970, 84 Stat. 632, Pub. L. 91-358, title II, § 210(a); June 11, 2013, D.C. Law 19-317, § 283(c), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "of not more than the amount set forth in [§ 22-3571.01]" for "not exceeding $5,000".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 283(c) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 11. PROFESSIONAL BONDSMEN.

§ 23-1108. Qualifications of bondsmen; rules to be prescribed by courts; list of agents to be furnished; renewal of authority to act; detailed records to be kept; penalties and disqualifications.

(a) It shall be the duty of the United States District Court for the District of Columbia and the Superior Court of the District of Columbia, each, to provide, under reasonable rules and regulations, the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the District of Columbia, and the terms and conditions upon which the business shall be carried on, and no person or corporation shall, either as principal, or as agent, clerk, or representative of another, engage in the bonding business in either court until he shall, by order of the court, be authorized to do so. The courts, in making these rules and regulations, and in granting authority to persons to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person so applying, and no person shall be permitted to engage, either as principal or agent, in the bonding business, who has ever been convicted of an offense involving moral turpitude, or who is not known to be a person of good moral character. It shall be the duty of each of the courts to require every person qualifying to engage in the bonding business as principal to file with the court a list showing the name, age, and residence of each person employed by the bondsman as agent, clerk, or representative in the bonding business, and require an affidavit from each of these persons stating that he will abide by the terms and provisions of this chapter. Each of the courts shall require the authority of each of those persons to be renewed from time to time at such periods as the court may by rule provide, and before the authority shall be renewed the court shall require from each of those persons an affidavit that since his previous qualification to engage in the bonding business he has abided by the provisions of this chapter, and any person swearing falsely in any of the affidavits shall be guilty of perjury.

(b) Each court shall prescribe such rules and regulations as may be necessary to insure that whenever a bondsman becomes surety for compensation upon a bond in a criminal case before the court, the bondsman shall make a record, which shall be accurate to the best of the maker's knowledge and belief and shall thereafter be open for inspection by the court or its designated representative, and by the designated representative of other law enforcement agencies of the District of Columbia, of the following matters:

(1) the full name and address of the person for whom the bond is executed (referred to in this subsection as the "defendant") and the full name and address of his employer, if any;

(2) the offense with which the defendant is charged;

(3) the name of the court or officer authorizing the defendant's admission to bail;

(4) the amount of the bond;

(5) the name of the person who called the bondsman, if other than the defendant;

(6) the amount of the bondsman's charge for executing the bond;

(7) the full name and address of the person to whom the bondsman presented his bill for the charge;

(8) the full name and address of the person paying the charge; and

(9) the manner of payment of the charge.

Whoever violates any rule or regulation prescribed under this subsection shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than six months, or both, and if he is a bondsman shall be disqualified from thereafter engaging in any manner in the bonding business for such period of time as the trial judge shall order.

(July 29, 1970, 84 Stat. 637, Pub. L. 91-358, title II, § 210(a); June 11, 2013, D.C. Law 19-317, § 283(d), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than $500" in (b).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 283(d) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 23-1110. Designation of official to take bail or collateral when court is not in session; issuance of citations.

(a) The judges of the Superior Court of the District of Columbia shall have the authority to appoint some official of the Metropolitan Police Department to act as a clerk of the court with authority to take bail or collateral from persons charged with offenses triable in the Superior Court at all times when the court is not open and its clerks accessible. The official so appointed shall have the same authority at those times with reference to taking bonds or collateral as the clerk of the Municipal Court had on March 3, 1933; shall receive no compensation for these services other than his regular salary; shall be subject to the orders and rules of the Superior Court in discharge of his duties, and may be removed as the clerk at any time by the judges of the court. The United States District Court for the District of Columbia shall have power to authorize the official appointed by the Superior Court to take bond of persons arrested upon writs and process from that court in criminal cases between 4 o'clock postmeridian and 9 o'clock antemeridian and upon Sundays and holidays, and shall have power at any time to revoke the authority granted by it.

(b)(1) An officer or member of the Metropolitan Police Department who arrests without a warrant a person for committing a misdemeanor may, instead of taking him into custody, issue a citation requiring the person to appear before an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court.

(2) Whenever a person is arrested without a warrant for committing a misdemeanor and is booked and processed pursuant to law, an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court may issue a citation to him for an appearance in court or at some other designated place, and release him from custody.

(3) No citation may be issued under paragraph (1) or (2) unless the person authorized to issue the citation has reason to believe that the arrested person will not cause injury to persons or damage to property and that he will make an appearance in answer to the citation.

(4) Whoever willfully fails to appear as required in a citation, shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 180 days, or both. Prosecution under this paragraph shall be by the prosecuting officer responsible for prosecuting the offense for which the citation is issued.

(July 29, 1970, 84 Stat. 638, Pub. L. 91-358, title II, § 210(a); Aug. 20, 1994, D.C. Law 10-151, § 101(a), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 283(e), 60 DCR 2064.)

Section references. — This section is referenced in § 25-781, § 25-785, and § 25-1002.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than the maximum provided for the misdemeanor for which such citation was issued" in (b)(4).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 283(e) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 23-1111. Penalties.

Any person violating any provision of this chapter shall be fined not less than $50 and not more than the amount set forth in [§ 22-3571.01], or imprisoned for not less than ten nor more than sixty days, or both, where no other penalty is provided by this chapter; and if the person so convicted is (1) a police officer or other public official, he shall upon recommendation of the trial judge also be forthwith dismissed from office, (2) a bondsman, he shall be disqualified from thereafter engaging in any manner in the bonding business for such a period of time as the trial judge shall order, or (3) an attorney at law, he shall be subject to suspension or disbarment as attorney at law.

(July 29, 1970, 84 Stat. 639, Pub. L. 91-358, title II, § 210(a); June 11, 2013, D.C. Law 19-317, § 283(f), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "and not more than the amount set forth in [§ 22-3571.01]" for "nor more than $100".

Emergency legislation. — For temporary (90 days) amendment of this section, see § 283(f) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 23-1108.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 13. BAIL AGENCY [PRETRIAL SERVICES AGENCY] AND PRETRIAL DETENTION.

Subchapter II. Release and Pretrial Detention

Subchapter II. Release and Pretrial Detention.

§ 23-1321. Release prior to trial.

(a) Upon the appearance before a judicial officer of a person charged with an offense, other than murder in the first degree, murder in the second degree, or assault with intent to kill while armed, which shall be treated in accordance with the provisions of § 23-1325, the judicial officer shall issue an order that, pending trial, the person be:

(1) Released on personal recognizance or upon execution of an unsecured appearance bond under subsection (b) of this section;

(2) Released on a condition or combination of conditions under subsection (c) of this section;

(3) Temporarily detained to permit revocation of conditional release under § 23-1322; or

(4) Detained under § 23-1322(b).

(b) The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a local, state, or federal crime during the period of release, unless the judicial officer determines that the release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c)(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, the judicial officer shall order the pretrial release of the person subject to the:

(A) Condition that the person not commit a local, state, or federal crime during the period of release; and

(B) Least restrictive further condition, or combination of conditions, that the judicial officer determines will reasonably assure the appearance of

the person as required and the safety of any other person and the community, which may include the condition or combination of conditions that the person during the period of release shall:

(i) Remain in the custody of a designated person or organization that agrees to assume supervision and to report any violation of a condition of release to the court, if the designated person or organization is able to reasonably assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) Maintain employment, or, if unemployed, actively seek employment;

(iii) Maintain or commence an educational program;

(iv) Abide by specified restrictions on personal associations, place of abode, or travel;

(v) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) Report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) Comply with a specified curfew;

(viii) Refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) Refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner; the terms "narcotic drug " and "controlled substance " shall have the same meaning as in section 102 of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D.C. Law 4-29; D.C. Official Code § 48-901.02);

(x) Undergo medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, if available, and remain in a specified institution if required for that purpose;

(xi) Return to custody for specified hours following release for employment, schooling, or other limited purposes, except that no person may be released directly from the District of Columbia Jail or the Correctional Treatment Facility for these purposes;

(xii) Execute an agreement to forfeit upon failing to appear as required, the designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court the indicia of ownership of the property, or a percentage of the money as the judicial officer may specify;

(xiii) Execute a bail bond with solvent sureties in whatever amount is reasonably necessary to assure the appearance of the person as required; or

(xiv) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

(2) In considering the conditions of release described in paragraph (1)(B)(xii) or (xiii) of this subsection, the judicial officer may upon his own motion, or shall upon the motion of the government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as

collateral to secure a bond, and shall decline to accept the designation or the use as collateral of property that, because of its source, will not reasonably assure the appearance of the person as required.

(3) A judicial officer may not impose a financial condition under paragraph (1)(B)(xii) or (xiii) of this subsection to assure the safety of any other person or the community, but may impose such a financial condition to reasonably assure the defendant's presence at all court proceedings that does not result in the preventive detention of the person, except as provided in § 23-1322(b).

(4) A person for whom conditions of release are imposed and who, after 24 hours from the time of the release hearing, continues to be detained as a result of inability to meet the conditions of release, shall upon application be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, on another condition or conditions, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition that requires that the person return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is released on another condition or conditions, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed the conditions of release is not available, any other judicial officer may review the conditions.

(5) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(July 29, 1970, 84 Stat. 642, Pub. L. 91-358, title II, § 210(a); Sept. 17, 1982, D.C. Law 4-152, §§ 2, 5, 29 DCR 3479; July 3, 1992, D.C. Law 9-125, § 2, 39 DCR 2134; Aug. 20, 1994, D.C. Law 10-151, § 601, 41 DCR 2608; June 12, 2001, D.C. Law 13-310, § 2(a), 48 DCR 1648; June 5, 2003, D.C. Law 14-307, § 2102, 49 DCR 11664.)

Section references. — This section is referenced in § 23-1322, § 23-1323, § 23-1324, § 23-1325, § 23-1326, § 23-1328, and § 23-1329.

LAW REVIEWS AND JOURNAL COMMENTARIES

Quid Pro Quo: Stay Drug-Free and Stay on Release. James K. Stewart, 57 Geo.Wash.L.Rev. 68 (1988).

§ 23-1322. Detention prior to trial.

(a) The judicial officer shall order the detention of a person charged with an offense for a period of not more than 5 days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the government to notify the appropriate court, probation or parole official, or local or state law enforcement official, if the judicial officer determines that the person charged with an offense:

(1) Was at the time the offense was committed, on:

(A) Release pending trial for a felony or misdemeanor under local, state, or federal law;

(B) Release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under local, state, or federal law; or

(C) Probation, parole or supervised release for an offense under local, state, or federal law; and

(2) May flee or pose a danger to any other person or the community or, when a hearing under § 23-1329(b) is requested, is likely to violate a condition of release. If the official fails or declines to take the person into custody during the 5-day period described in this subsection, the person shall be treated in accordance with other provisions of law governing release pending trial.

(b)(1) The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in § 23-1321(c) will reasonably assure the appearance of the person as required and the safety of any other person and the community, upon oral motion of the attorney for the government, in a case that involves:

(A) A crime of violence, or a dangerous crime, as these terms are defined in § 23-1331;

(B) An offense under section 502 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-722);

(C) A serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

(D) A serious risk that the person will flee.

(2) If, after a hearing pursuant to the provision of subsection (d) of this section, the judicial officer finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the appearance of the person as required, and the safety of any other person and the community, the judicial officer shall order that the person be detained before trial.

(c) There shall be a rebuttable presumption that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community if the judicial officer finds by probable cause that the person:

(1) Committed a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, while armed with or having readily available a pistol, firearm, imitation firearm, or other deadly or dangerous weapon;

(2) Has threatened, injured, intimidated, or attempted to threaten, injure, or intimidate a law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal investigation or judicial proceeding;

(3) Committed a dangerous crime or a crime of violence, as these terms are defined in § 23-1331, and has previously been convicted of a dangerous crime or a crime of violence which was committed while on release pending trial for a local, state, or federal offense;

(4) Committed a dangerous crime or a crime of violence while on release pending trial for a local, state, or federal offense;

(5) Committed 2 or more dangerous crimes or crimes of violence in separate incidents that are joined in the case before the judicial officer;

(6) Committed a robbery in which the victim sustained a physical injury;

(7) Violated § 22-4504(a) (carrying a pistol without a license), § 22-4504(a-1) (carrying a rifle or shotgun), § 22-4504(b) (possession of a firearm during the commission of a crime of violence or dangerous crime), or § 22-4503 (unlawful possession of a firearm); or

(8) Violated [subchapter VIII of Chapter 25 of Title 7, § 7-2508.01 et seq.], while on probation, parole, or supervised release for committing a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, and while armed with or having readily available a firearm, imitation firearm, or other deadly or dangerous weapon as described in § 22-4502(a).

(d)(1) The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on motion of the person shall not exceed 5 days, and a continuance on motion of the attorney for the government shall not exceed 3 days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the government or *sua sponte*, may order that, while in custody, a person who appears to be an addict receive a medical examination to determine whether the person is an addict, as defined in § 23-1331.

(2) At the hearing, the person has the right to be represented by counsel and, if financially unable to obtain adequate representation, to have counsel appointed.

(3) The person shall be afforded an opportunity to testify. Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings under §§ 23-1327, 23-1328, and 23-1329, in perjury proceedings, and for the purpose of impeachment in any subsequent proceedings.

(4) The person shall be afforded an opportunity to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing.

(5) The person shall be detained pending completion of the hearing.

(6) The hearing may be reopened at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the appearance of the person as required or the safety of any other person or the community.

(7) When a person has been released pursuant to this section and it subsequently appears that the person may be subject to pretrial detention, the attorney for the government may initiate a pretrial detention hearing by ex parte written motion. Upon such motion, the judicial officer may issue a warrant for the arrest of the person and if the person is outside the District of Columbia, the person shall be brought before a judicial officer in the district where the person is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section.

(e) The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account information available concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or dangerous crime as these terms are defined in § 23-1331, or involves obstruction of justice as defined in § 22-722;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person, including:

(A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) Whether, at the time of the current offense or arrest, the person was on probation, on parole, on supervised release, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under local, state, or federal law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(f) In a release order issued under § 23-1321(b) or (c), the judicial officer shall:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) Advise the person of:

(A) The penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) The consequences of violating a condition of release, including immediate arrest or issuance of a warrant for the person's arrest; and

(C) The provisions of § 22-722, relating to threats, force, or intimidation of witnesses, jurors, and officers of the court, obstruction of criminal investigations and retaliating against a witness, victim, or an informant.

(g) In a detention order issued under subsection (b) of this section, the judicial officer shall:

(1) Include written findings of fact and a written statement of the reasons for the detention;

(2) Direct that the person be committed to the custody of the Attorney General of the United States for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) Direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) Direct that, on order of a judicial officer or on request of an attorney for the government, the person in charge of the corrections facility in which the person is confined deliver the person to the United States Marshal or other appropriate person for the purpose of an appearance in connection with a court proceeding.

(h)(1) The case of the person detained pursuant to subsection (b) of this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person shall be indicted before the expiration of 90 days, and shall have trial of the case commence before the expiration of 100 days. However, the time within which the person shall be indicted or shall have the trial of the case commence may be extended for one or more additional periods not to exceed 20 days each on the basis of a petition submitted by the attorney for the government and approved by the judicial officer. The additional period or periods of detention may be granted only on the basis of good cause shown, including due diligence and materiality, and shall be granted only for the additional time required to prepare for the expedited indictment and trial of the person. Good cause may include, but is not limited to, the unavailability of an essential witness, the necessity for forensic analysis of evidence, the ability to conduct a joint trial with a co-defendant or co-defendants, severance of co-defendants which permits only one trial to commence within the time period, complex or major investigations, complex or difficult legal issues, scheduling conflicts which arise shortly before the scheduled trial date, the inability to proceed to trial because of action taken by or at the behest of the defendant, an agreement between the government and the defense to dispose of the case by a guilty plea on or after the scheduled trial date, or the breakdown of a plea on or immediately before the trial date, and allowing reasonable time to prepare for an expedited trial after the circumstance giving rise to a tolling or extension of the 100-day period no longer exists. If the time within which the person must be indicted or the trial must commence is tolled or extended, an indictment must be returned at least 10 days before the new trial date.

(2) For the purposes of determining the maximum period of detention under this section, the period shall begin on the latest of:

(A) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia after arrest;

(B) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia following a re-arrest or order of detention after having been conditionally released under § 23-1321 or after having escaped;

(C) The date on which the trial of a defendant detained under subsection (b) of this section ends in a mistrial;

(D) The date on which an order permitting the withdrawal of a guilty plea becomes final;

(E) The date on which the defendant reasserts his right to an expedited trial following a waiver of that right;

(F) The date on which the defendant, having previously been found incompetent to stand trial, is found competent to stand trial;

(G) The date on which an order granting a motion for a new trial becomes final; or

(H) The date on which the mandate is filed in the Superior Court after a case is reversed on appeal.

(3) After 100 days, as computed under paragraphs (2) and (4) of this section, or such period or periods of detention as extended under paragraph (1)

of this section, the defendant shall be treated in accordance with § 23-1321(a) unless the trial is in progress, has been delayed by the timely filing of motions, excluding motions for continuance, or has been delayed at the request of the defendant.

(4) In computing the 100 days, the following periods shall be excluded:

(A) Any period from the filing of the notice of appeal to the issuance of the mandate in an interlocutory appeal;

(B) Any period attributable to any examination to determine the defendant's sanity or lack thereof or his or her mental competency or physical capacity to stand trial;

(C) Any period attributable to the inability of the defendant to participate in his or her defense because of mental incompetency or physical incapacity; and

(D) Any period in which the defendant is otherwise unavailable for trial.

(i) Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(July 29, 1970, 84 Stat. 644, Pub. L. 91-358, title II, § 210(a); Sept. 17, 1982, D.C. Law 4-152, § 3, 29 DCR 3479; July 28, 1989, D.C. Law 8-19, § 2(a), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 2(a), 37 DCR 24; July 3, 1992, D.C. Law 9-125, § 3, 39 DCR 2134; Aug. 20, 1994, D.C. Law 10-151, § 602(a), 41 DCR 2608; May 16, 1995, D.C. Law 10-255, § 17, 41 DCR 5193; July 25, 1995, D.C. Law 11-30, § 6, 42 DCR 1547; June 3, 1997, D.C. Law 11-273, § 3(b), 43 DCR 6168; June 3, 1997, D.C. Law 11-275, § 14(f), 44 DCR 1408; June 12, 2001, D.C. Law 13-310, § 2(b), 48 DCR 1648; May 17, 2002, D.C. Law 14-134, § 7, 49 DCR 408; May 5, 2007, D.C. Law 16-308, § 3(a), 54 DCR 942; Dec. 10, 2009, D.C. Law 18-88, § 223, 56 DCR 7413; Sept. 26, 2012, D.C. Law 19-171, § 78, 59 DCR 6190; June 19, 2013, D.C. Law 19-320, § 107(c), 60 DCR 3390.)

Section references. — This section is referenced in § 23-1321, § 23-1323, § 23-1324, and § 23-1329.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 made a technical correction to D.C. Law 18-88 which did not affect this section as codified.

The 2013 amendment by D.C. Law 19-320 substituted "or § 22-4503 (unlawful possession of a firearm)" for "§ 22-4503 (unlawful possession of a firearm) or [§ 22-2511] (presence in a motor vehicle containing a firearm)" in (c)(7).

Emergency legislation.

For temporary amendment of (c)(7), see § 107(c) of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

For temporary (90 days) amendment of this section, see § 107(c) of the Omnibus Criminal Code Amendment Congressional Review Emergency Act of 2013 (D.C. Act 20-44, April 1, 2013, 60 DCR 5381, 20 DCSTAT 1281).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

CASE NOTES

ANALYSIS

Construction and application.
Detention held improper.

Construction and application.

While D.C. Code § 23-1322(c)(2) does not specify whether or not "judicial" proceedings include other than criminal ones, the plain language of the statute appears to include judicial proceedings seeking divorce. Bradshaw v. United States, 55 A.3d 394, 2012 D.C. App. LEXIS 509 (2012).

Detention held improper.

Trial court erred in ordering defendant, charged with solicitation of murder, held without bond pursuant to D.C. Code § 23-1322(b)(1)(C), as it did not clearly consider the nexus between his past conduct and whether there was a serious risk that he would threaten, injure, or intimidate, or attempt to do so as to a prospective witness. Bradshaw v. United States, 55 A.3d 394, 2012 D.C. App. LEXIS 509 (2012).

Trial court erred in ordering defendant held without bond pursuant to D.C. Code § 23-1322(b)(1)(C), as it did not adequately articulate its consideration of the requirement that it consider and determine whether any other combination of conditions would reasonably assure the safety of others as required by § 23-1322(b)(1). Bradshaw v. United States, 55 A.3d 394, 2012 D.C. App. LEXIS 509 (2012).

LAW REVIEWS AND JOURNAL COMMENTARIES

Constitutional Rights, Due Process, And The Dissenting Voice, 40 Howard Law Journal 399.

Preventive Detention And United States v. Edwards: Burdening The Innocent, 32 American University Law Review, The 191.

Preventive Detention, A Species of Lydford Law. Sam J. Ervin, Jr., 52 Geo.Wash.L.Rev. 113 (1983).

"The unnecessary detention of children in the District of Columbia—Juvenile detention law in the District of Columbia: A practitioner's guide." 3 The District of Columbia Law Review 281 (1995).

§ 23-1327. Penalties for failure to appear.

(a) Whoever, having been released under this title prior to the commencement of his sentence, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari prior to commencement of his sentence after conviction of any offense, be fined not more than the amount set forth in [§ 22-3571.01] and imprisoned not less than one year and not more than five years, (2) if he was released in connection with a charge of misdemeanor, be fined not more than the amount set forth in [§ 22-3571.01] and imprisoned for not less than ninety days and not more than 180 days, or (3) if he was released for appearance as a material witness, be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 180 days, or both.

(b) Any failure to appear after notice of the appearance date shall be prima facie evidence that such failure to appear is wilful. Whether the person was warned when released of the penalties for failure to appear shall be a factor in determining whether such failure to appear was wilful, but the giving of such warning shall not be a prerequisite to conviction under this section.

(c) The trier of facts may convict under this section even if the defendant has not received actual notice of the appearance date if (1) reasonable efforts to

notify the defendant have been made, and (2) the defendant, by his own actions, has frustrated the receipt of actual notice.

(d) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

(July 29, 1970, 84 Stat. 648, Pub. L. 91-358, title II, § 210(a); Aug. 20, 1994, D.C. Law 10-151, § 101(b), (c), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 283(g), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801, § 23-1303, and § 23-1322.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (a), substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than $5,000" in clause (1), for "not more than the maximum provided for each misdemeanor" in clause (2), and for "not more than $1,000" in clause (3).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 283(g) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Intent.
—Wilfulness, intent.

Intent.

— Wilfulness, intent.

Evidence was sufficient to show that defendant had not been released by a judicial officer after his case was called and passed over, and thus acted willfully, as required to support conviction for violating Bail Reform Act, by failing be present in courtroom later same day when his case was called again; although computer codes entered by courtroom clerks indicated that usual courtroom procedures had not been followed for recording defendant's initial appearance and failure to remain in courtroom, defendant's failure to appear was by itself prima facie evidence of willful action, police officer testified that defendant had left courtroom because he wanted to find witnesses, and jury could infer, from the fact that the case was recalled the same day, that defendant knew he had not been released and the case would be recalled later in the day. Gilliam v. United States, 46 A.3d 360, 2012 D.C. App. LEXIS 305 (2012).

§ 23-1328. Penalties for offenses committed during release.

(a) Any person convicted of an offense committed while released pursuant to section 23-1321 shall be subject to the following penalties in addition to any other applicable penalties:

(1) A term of imprisonment of not less than one year and not more than five years if convicted of committing a felony while so released; and

(2) A term of imprisonment of not less than ninety days and not more than 180 days if convicted of committing a misdemeanor while so released.

(b) The giving of a warning to the person when released of the penalties imposed by this section shall not be a prerequisite to the application of this section.

(c) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

(d) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 29, 1970, 84 Stat. 649, Pub. L. 91-358, title II, § 210(a); Aug. 20, 1994, D.C. Law 10-151, § 101(d), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 311(a), 60 DCR 2064.)

Section references. — This section is referenced in § 23-1303 and § 23-1322.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (d).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 311(a) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 23-1328.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 23-1329. Penalties for violation of conditions of release.

(a) A person who has been conditionally released pursuant to section 23-1321 and who has violated a condition of release shall be subject to revocation of release, an order of detention, and prosecution for contempt of court.

(a-1) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in [§ 22-3571.01].

(b)(1) Proceedings for revocation of release may be initiated on motion of the United States Attorney or on the court's own motion. A warrant for the arrest of a person charged with violating a condition of release may be issued by a judicial officer and if such person is outside the District of Columbia he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section. No order of revocation and detention shall be entered unless, after a hearing, the judicial officer:

(A) Finds that there is:

(i) Probable cause to believe that the person has committed a federal, state, or local crime while on release; or

(ii) Clear and convincing evidence that the person has violated any other condition of his release; and

(B) Finds that:

(i) Based on the factors set out in § 23-1322(e), there is no condition or combination of conditions of release which will reasonably assure that the person will not flee or pose a danger to any other person or the community; or

(ii) The person is unlikely to abide by a condition or conditions of release.

(2) If there is probable cause to believe that while on release, the person committed a dangerous or violent crime, as defined by § 23-1331, or a substantially similar offense under the laws of any other jurisdiction, a rebuttable presumption arises that no condition or combination of conditions will assure the safety of any other person or the community.

(3) The provisions of § 23-1322(d) and (h) shall apply to this subsection.

(c) Contempt sanctions may be imposed if, upon a hearing and in accordance with principles applicable to proceedings for criminal contempt, it is established that such person has intentionally violated a condition of his release. Such contempt proceedings shall be expedited and heard by the court without a jury. Any person found guilty of criminal contempt for violation of a condition of release shall be imprisoned for not more than six months, or fined not more than the amount set forth in [§ 22-3571.01], or both. A judicial officer or a prosecutor may initiate a proceeding for contempt under this section.

(d) Any warrant issued by a judge of the Superior Court for violation of release conditions or for contempt of court, for failure to appear as required, or pursuant to § 23-1322(d)(7), may be executed at any place within the jurisdiction of the United States. Such warrants shall be executed by a United States marshal or by any other officer authorized by law.

(e) A person who has been conditionally released and who violates a condition of that release by using a controlled substance or by failing to comply with the prescribed treatment for use of a controlled substance, may be ordered by the court, in addition to or in lieu of the penalties and procedures prescribed in subsections (a) through (d) of this section, to temporary placement in custody, when, in the opinion of the court, such action is necessary for treatment or to assure compliance with conditions of release. A person shall not be subject to an order of temporary detention under this subsection, unless before any such violation and order, the person has agreed in writing to the imposition of such an order as a sanction for the person's violation of a condition of release.

(f)(1) Within 180 days of the effective date of this act [June 12, 2001], the Department of Corrections, in consultation with the Federal Bureau of Prisons, the Court Services and Offender Supervision Agency, and the Pretrial Services Agency, shall promulgate regulations, in accordance with [Chapter 5 of Title 2] to establish standards of conduct and discipline for persons released pursuant to § 23-1321(c)(1)(B)(xi). Such regulations shall set forth sanctions for different kinds of violations, up to and including revocation of release and detention.

(2) If a person who has been released pursuant to § 23-1321(c)(1)(B)(xi) violates a standard of conduct for which the sanction is revocation of release, the Department of Corrections may take the person into its custody or, if necessary, apply for a warrant for the person's arrest.

(3) The Department of Corrections shall immediately notify the Superior Court of the District of Columbia ("the Court") of the detention of the person and request an order for the person to be brought before the Court without unnecessary delay. An affidavit stating the basis for the person's remand to the jail shall be filed forthwith with the Court.

(4) If, based on the affidavit described in paragraph (3) of this subsection, the Court finds probable cause to believe that the person violated a standard of conduct for which a sanction is revocation of release, it shall schedule a hearing for revocation of release under subsection (b) of this section and shall detain the person pending completion of the hearing.

(5) If, based on the affidavit described in paragraph (3) of this subsection, the Court does not find probable cause to believe that the person violated a standard of conduct for which the sanction is revocation of release, it shall order the release of the person with the original or modified conditions of release.

(July 29, 1970, 84 Stat. 649, Pub. L. 91-358, title II, § 210(a); July 3, 1992, D.C. Law 9-125, § 7, 39 DCR 2134; Oct. 10, 1998, D.C. Law 12-165,§ 3, 45 DCR 2980; June 12, 2001, D.C. Law 13-310, § 2(d), 48 DCR 1648; Oct. 26, 2001, D.C. Law 14-42, § 24, 48; June 11, 2013, D.C. Law 19-317, §§ 283(h), 311(b), 60 DCR 2064.)

Section references. — This section is referenced in § 23-1303 and § 23-1322.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (a-1); and substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than $1,000" in (c).

Emergency legislation.

For temporary (90 days) amendment of this section, see §§ 283(h) and 311(b) of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 23-1327.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Double jeopardy.

Defendant's convictions for unlawful entry, D.C. Code § 22-3302 (2001), and criminal contempt, D.C. Code § 23-1329 (2001), did not pass the Blockburger test because the provision of the release order that defendant violated and that supported his contempt conviction was the provision that ordered him to stay away from the premises of 2301 11th Street, and thus, defendant violated his release order when he willfully did not stay away from the premises of 2301 11th Street. The barring notice prohibited defendant from entering the public housing complex, and thus, defendant committed the offense of unlawful entry when he entered 2301 11th Street, part of the public housing complex, in violation of the barring notice; therefore, because the violated provision of the order, not staying away from the public housing complex building at 2301 11th Street on September 22, 2010, did not require proof of an element that unlawful entry did not also require, defendant's unlawful entry conviction was a replication of the release-order violation and thus, defendant could not be punished for both under the Double Jeopardy Clause of the Fifth Amendment. Haye v. United States, 67 A.3d 1025, 2013 D.C. App. LEXIS 66 (2013).

§ 23-1331. Definitions.

As used in this subchapter:

(1) The term "judicial officer" means, unless otherwise indicated, any person or court in the District of Columbia authorized pursuant to section 3041 of Title 18, United States Code, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court.

(2) The term "offense" means any criminal offense committed in the District of Columbia, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress.

(3) The term "dangerous crime" means:

(A) Any felony offense under Chapter 45 of Title 22 (Weapons) or Unit A of Chapter 25 of Title 7 (Firearms Control);

(B) Any felony offense under Chapter 27 of Title 22 (Prostitution, Pandering);

(C) Any felony offense under Unit A of Chapter 9 of Title 48 (Controlled Substances);

(D) Arson or attempted arson of any premises adaptable for overnight accommodation of persons or for carrying on business;

(E) Burglary or attempted burglary;

(F) Cruelty to children;

(G) Robbery or attempted robbery;

(H) Sexual abuse in the first degree, or assault with intent to commit first degree sexual abuse;

(I) Any felony offense established by the Prohibition Against Human Trafficking Amendment Act of 2010 [D.C. Law 18-239; § 22-1831 et seq.] or any conspiracy to commit such an offense; or

(J) Fleeing from an officer in a motor vehicle (felony).

(4) The term "crime of violence" means aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with significant bodily injury; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder; robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt, solicitation, or conspiracy to commit any of the foregoing offenses.

(5) The term "addict" means any individual who habitually uses any narcotic drug as defined by section 4731 of the Internal Revenue Code of 1954 so as to endanger the public morals, health, safety, or welfare.

(6) The term "physical injury" means bodily harm greater than transient pain or minor temporary marks.

(July 29, 1970, 84 Stat. 650, Pub. L. 91-358, title II, § 210(a); July 28, 1989, D.C. Law 8-19, § 2(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 2(c), 37 DCR 24; May 8, 1993, D.C. Law 9-270, § 3, 39 DCR 9223; Oct. 2, 1993, D.C. Law 10-26, § 3, 40 DCR 3416; Aug. 20, 1994, D.C. Law 10-151, § 101(e), 41 DCR 2608; May 23, 1995, D.C. Law 10-257, § 401(f), 42 DCR 53; June 3, 1997, D.C. Law 11-273, § 3(a), 43 DCR 6168; June 12, 2001, D.C. Law 13-310, § 2(e), 48 DCR 1648; Oct. 17, 2002, D.C. Law 14-194, § 156(b), 49 DCR 5306; Apr. 24, 2007, D.C. Law 16-306, § 224(c), 53 DCR 8610; May 5, 2007, D.C. Law 16-308, § 3(b), 54 DCR 942; Oct. 23, 2010, D.C. Law 18-239, § 206(b), 57 DCR 5405; Sept. 29, 2012, D.C. Law 19-170, § 4, 59 DCR 5691; June 19, 2013, D.C. Law 19-320, § 107(a), 60 DCR 3390.)

Section references. — This section is referenced in § 5-116.01, § 5-132.21, § 7-1301.03, § 7-2501.01, § 16-2310, § 16-2310.01, § 16-2331, § 16-2332, § 16-2333, § 16-4205, § 22-

951, § 22-1803, § 22-1805a, § 22-2107, § 22-3215, § 22-3611, § 22-4131, § 22-4501, § 22-4503, § 23-1322, § 23-1323, § 23-1329, § 24-211.07, § 24-403.01, § 24-531.05, § 24-531.08, § 24-531.09, and § 48-1002.

Effect of amendments.

The 2012 amendment by D.C. Law rewrote (3)(A).

The 2012 amendment by D.C. Law rewrote (3)(A).

The 2013 amendment by D.C. Law 19-320 added (3)(J) and made related changes; and in (4), inserted "assault with significant bodily injury" preceding "assault with intent to commit any other offense" and substituted "an attempt, solicitation, or conspiracy" for "an attempt or conspiracy".

Emergency legislation.

For temporary (90 day) amendment of section, see § 4 of Firearms Emergency Amendment Act of 2012 (D.C. Act 19-352, May 11, 2012,

For temporary amendment of (3)(A), see § 4 of the Firearms Second Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-510, October 26, 2012, 59 DCR 12808).

For temporary amendment of section, see § 107(a) of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

For temporary (90 days) amendment of this section, see § 107(a) of the Omnibus Criminal Code Amendment Congressional Review Emergency Act of 2013 (D.C. Act 20-44, April 1, 2013, 60 DCR 5381, 20 DCSTAT 1281).

Legislative history of Law 19-170. — Law 19-170, the "Firearms Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-614. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-366 and transmitted to Congress for its review. D.C. Law 19-170 became effective on Sept. 26, 2012.

Legislative history of Law 19-320. — See note to § 23-1322.

CHAPTER 19. CRIME VICTIMS' RIGHTS.

Sec.
23-1905. Definitions.

§ 23-1905. Definitions.

For purposes of this section,

(1) The term "community" means a formal or informal association or group of people living, working, or attending school in the same place or neighborhood and sharing common interests arising from social, business, religious, governmental, scholastic, or recreational associations.

(1A) The term "community impact statement" means a written statement that provides information about the social, financial, emotional, and physical effects of the defendant or crime on the community.

(1B) The term "court" means the Superior Court of the District of Columbia.

(2)(A) The term "victim" or "crime victim" means a person who or entity which has suffered direct physical, emotional, or pecuniary harm:

(i) As a result of the commission of any felony or misdemeanor in violation of any criminal statute in the District of Columbia;

(ii) While assisting lawfully to apprehend a person reasonably suspected of having committed or attempted a crime;

(iii) While assisting a person against whom a crime has been committed or attempted if the assistance was rendered in a reasonable manner; or

(iv) While attempting to prevent the commission of a crime.

(B) In the case of a victim or crime victim:

(i) That is an institutional entity, the term "victim" or "crime victim" includes an authorized representative of the entity.

(ii) Who is under 18 years of age, incompetent, incapacitated, or deceased, the term "victim" or "crime victim" includes a representative appointed by the court to exercise the rights and receive the services set forth in this chapter on behalf of the victim.

(C) The term "victim" shall not include any person who committed or aided or abetted in the commission of the crime.

(June 8, 2001, D.C. Law 13-301, § 302(b), 47 DCR 7039; Nov. 6, 2010, D.C. Law 18-259, § 2(b), 57 DCR 5591; June 19, 2013, D.C. Law 19-320, § 107(b), 60 DCR 3390.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-320 deleted "violent" preceding "misdemeanor" in (2)(A)(i).

Emergency legislation. — For temporary amendment of (2)(A)(i), see § 107(b) of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

For temporary (90 days) amendment of this section, see § 107(b) of the Omnibus Criminal Code Amendment Congressional Review Emergency Act of 2013 (D.C. Act 20-44, April 1, 2013, 60 DCR 5381, 20 DCSTAT 1281).

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

TITLE 24. PRISONERS AND THEIR TREATMENT.

Chapter 1. Transfer of Prison System to Federal Authority.

Subchapter I. Corrections.

§ 24-101. Bureau of Prisons.

(a) *Felons sentences pursuant to the truth-in-sentencing requirements.* — Not later than October 1, 2001, any person who has been sentenced to incarceration pursuant to the District of Columbia Official Code or the truth-in-sentencing system as described in § 24-111 shall be designated by the Bureau of Prisons to a penal or correctional facility operated or contracted for by the Bureau of Prisons, for such term of imprisonment as the court may direct. Such persons shall be subject to any law or regulation applicable to persons committed for violations of laws of the United States consistent with the sentence imposed.

(b) *Felons sentenced pursuant to the D.C. Code.* — Notwithstanding any other provision of law, not later than December 31, 2001, the Lorton Correctional Complex shall be closed and the felony population sentenced pursuant to the District of Columbia Official Code residing at the Lorton Correctional Complex shall be transferred to a penal or correctional facility operated or contracted for by the Bureau of Prisons. Such persons shall be subject to any law or regulation applicable to persons committed for violations of laws of the United States consistent with the sentence imposed, and the Bureau of Prisons shall be responsible for the custody, care, subsistence, education, treatment and training of such persons.

(c) *Privatization.* —

(1) *Transition of inmates from Lorton.* — The Bureau of Prisons shall house, in private contract facilities:

(A) At least 2000 District of Columbia sentenced felons by December 31, 1999; and

(B) At least 50 percent of the District of Columbia sentenced felony population by September 30, 2003.

(2) *Duties of Deputy Attorney General.* — The Deputy Attorney General shall

(A) Be responsible for overseeing Bureau of Prisons privatization activities; and

(B) Submit a report to Congress on October 1 of each year detailing the progress and status of compliance with privatization requirements.

(3) *Duties of Attorney General.* — The Attorney General shall:

(A) Conduct a study of correctional privatization, including a review of relevant research and related legal issues, and comparative analysis of the cost effectiveness and feasibility of private sector and Federal, State, and local governmental operation of prisons and corrections programs at all security levels; and

(B) Submit a report to Congress no later than one year after August 5, 1997.

(d) *Site acquisition and construction.* — In order to house the District of Columbia felony inmate population the Bureau of Prisons shall acquire land, construct and build new facilities at sites selected by the Bureau of Prisons, or contract for appropriate bed space, but no facilities may be built on the grounds of the Lorton Reservation.

(e) *National capital planning.* — Notwithstanding any other provision of law, the requirements of the National Capital Planning Act of 1952 (40 U.S.C. 71 et seq.) shall not apply to any actions taken by the Bureau of Prisons or its agents or employees.

(f) *Department of Corrections authority.* — The District of Columbia Department of Corrections shall remain responsible for the custody, care, subsistence, education, treatment, and training of any person convicted of a felony offense pursuant to the District of Columbia Official Code and housed at the Lorton Correctional Complex until December 31, 2001, or the date on which the last inmate housed at the Lorton Correctional Complex is designated by the Bureau of Prisons, whichever is earlier.

(g) *Lorton Correctional Complex.* —

(1) *Transfer of functions.* —

(A) Notwithstanding any other provision of law, to the extent the Bureau of Prisons assumes functions of the Department of Corrections under this subchapter, the Department is no longer responsible for such functions and the provisions of §§ 24-211.01 and 24-211.02, that apply with respect to such functions are no longer applicable.

(B) Contingent on the General Services Administration (GSA) receiving the necessary appropriations to carry out the requirements of this paragraph and subsection (g), and notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 471 et seq.), not later than 60 days after the date of enactment of the Lorton Technical Corrections Act of 1998 [Oct. 21, 1998], any property on which the Lorton Correctional Complex is located shall be transferred to the GSA.

(C) Not later than one year after the date of enactment of the Lorton Technical Corrections Act of 1998 [Oct. 21, 1998], Fairfax County shall submit

a reuse plan that complies with all requisite approvals to the Administrator of General Services, that aims to maximize use of the land for open space, park land, or recreation, while delineating permissible or required uses, potential development densities, and any time limits on such development factors of the property on which the Lorton Correctional Complex is located.

(D) Not later than 180 days after the date of enactment of the Lorton Technical Corrections Act of 1998 [Oct. 21, 1998], the Secretary of the Interior shall notify GSA of any property it requests to be transferred to the Department of the Interior for the purpose of a land exchange by the United States Fish and Wildlife Service within the Commonwealth of Virginia or such other purposes consistent with the reuse plan developed by Fairfax County as the Secretary may request. The Administrator of General Services shall approve the Secretary's request to the extent that the request is consistent with the reuse plan developed by Fairfax County and does not result in a significant reduction in the marketability or value of any remaining property. The Administrator of General Services shall coordinate with the Secretary of the Interior to resolve any conflicts presented by the Department of the Interior's request and shall transfer the property to the Department of the Interior at no cost.

(E) Any property not transferred to the Department of the Interior under subparagraph (D) shall be disposed of according to paragraphs (2) and (4).

(2) *Transfer of land.* —

(A) *In general.* —

(i) *Fairfax County Water Authority.* — 150 acres of parcel 106-4-001-54 located west of Ox Road (State Route 123) on which the Lorton Correctional Complex is located shall be transferred, without consideration, to the Fairfax County Water Authority of Fairfax, Virginia.

(ii) *Fairfax County Parks Authority.* — Any acres of parcel 106-4-001-54 located west of Ox Road (State Route 123) on which the Lorton Correctional Complex is located not transferred under sub-subparagraph (i) shall be assigned to the Department of the Interior, National Park Service, for conveyance to the Fairfax County Parks Authority for recreational purposes pursuant to the section 203(k)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 484(k)(2) [now see 40 U.S.C. § 550(e)]).

(B) Condition of transfer.

(i) *Water services.* — The United States Government shall not transfer any parcels under this paragraph unless the Fairfax County Water Authority certifies that it will continue to provide water services to the Lorton Correctional Complex at the rate it provided water services prior to the transfer.

(ii) *Restriction on transfer.* — No Federal agency may transfer the property under this paragraph until the prospective recipient of the property provides to such agency —

(I) A land description survey suitable for transferring property under Virginia law; and

(II) Any necessary surveys to determine the presence of any hazardous substances, contaminants or pollutants.

(iii) *Lorton Correctional Complex.* — The Lorton Correctional Complex shall remain available for the District of Columbia Department of Corrections to house District of Columbia felony inmates until the last inmate at the Complex has been designated by the Bureau of Prisons or until December 31, 2003 [December 31, 2001], whichever is earlier.

(C) *Authorization.* — The General Services Administration and the National Park Service is authorized to expend any funds necessary to ensure that the transfer or conveyance under subparagraph (A) of this paragraph complies with all applicable environmental and historic preservation laws.

(3) *Water mains.* — Any water mains located on or across the Lorton Correctional Complex on the date of the transfers under paragraph (2) of this subsection, that are owned by the Fairfax County Water Authority and provide water to the public, shall be permitted to remain in place, and shall be operated, maintained, repaired, and replaced by the Fairfax County Water Authority or a successor agency furnishing water to the public in Fairfax County or adjacent jurisdictions, but shall not interfere with operations of the Lorton Correctional Complex.

(4) *Conditions on transfer of Lorton property east of Ox Road (State Route 123).* —

(A) *In General.* — With respect to property east of Ox Road (State Route 123) on which the Lorton Correctional Complex is located, the Administrator of General Services shall—

(i) Cooperate with the District of Columbia Corrections Trustee to determine property necessary for the Trustee to maintain the security of the Lorton Correctional Complex until its closure;

(ii) Prepare a report of title, complete a property description, provide protection and maintenance, conduct an environmental assessment of the property to determine the extent of contamination, complete National Environmental Policy Act of 1969 (42 U.S.C. § 4331 et seq.) and National Historic Preservation Act (16 U.S.C. § 470 et seq.) processes for closure and disposal of the property, and provide an estimate of the cost for remediation and contingent on receiving the necessary appropriations complete the remediation in compliance with applicable federal and state environmental laws;

(iii) Develop a disposition strategy incorporating the Fairfax County reuse plan and the Department of Interior's land transfer request, and resolve conflicts between the plan and the transfer request, or between the reuse plan, the transfer request and the results of the environmental studies;

(iv) Negotiate with any entity that has a lease, agreement, memorandum of understanding, right-of-way, or easement with the District of Columbia to occupy or utilize any parcels of such property on October 1, 1997, to perfect or extend such lease, agreement, memorandum of understanding, right-of-way, or easement;

(v) Transfer any property identified for use for open space, park land, or recreation in the Fairfax County reuse plan to the Northern Virginia Regional Park Authority, the Fairfax County Park Authority, or another public entity, subject to the condition that the recipient use the conveyed property

only for open space, park land, or recreation and that the transfer be at fair market value considering the highest and best use of the property to be open space, park land, and recreation;

(vi) Immediately upon completing the remediation required under sub-subparagraph (ii) of this subparagraph (but in no event later than June 1, 2003), transfer any property located south of Silverbrooke Road which is identified for use for educational purposes in the Fairfax County reuse plan to the County, without consideration, subject to the condition that the County use the property only for educational purposes;

(vii) Not later than 60 days after the property is transferred to the General Services Administration, transfer at fair market value the six-acre parcel east of Shirley Highway on Interstate 95 to Amtrak, subject to such terms and conditions as the Administrator determines to be in the best interest of the United States;

(viii) Dispose of any parcels not reserved by the Department of the Interior and not otherwise addressed under this subparagraph at fair market value, subject to such terms and conditions as the Administrator determines to be in the best interest of the United States;

(ix) Deposit any proceeds from the sale of property on which the Lorton Correctional Complex is located into a special fund established in the treasury for purposes of covering real property utilization and disposal related expenses, including environmental compliance and remediation for the Lorton Correctional Complex until all property has been conveyed; and

(x) Deposit any remaining funds in the Policy and Operations appropriation account of the General Services Administration to be used for real property utilization and disposal activities until expended.

(B) *Report.* — Not later than 90 days after the date of the receipt of the Fairfax County reuse plan and the Department of the Interior property transfer request by the Administrator of General Services, the Administrator shall report to the Committees on Appropriations and Government Reform and Oversight of the House of Representatives, and the Committees on Appropriations and Governmental Affairs of the Senate on plans to comply with the terms of this paragraph and any estimated costs associated with compliance.

(C) *Authorization.* — There is authorized to be appropriated such sums as are necessary from the general funds of the Treasury, to remain available until expended, to the Policy and Operations appropriation account of the General Services Administration for the real property utilization and disposal activities in carrying out the provisions of this title.

(5) *Jurisdiction.* — Any property disposed of according to paragraphs (2) and (4) shall be under the jurisdiction of the Commonwealth of Virginia. Any development of such property and any property transferred to the Department of the Interior for exchange purposes shall comply with any applicable planning and zoning requirements of Fairfax County and the Fairfax County reuse plan.

(6) *Meadowood Farm Land Exchange.* —

(A) *In general.* — If, not later than January 15, 2001, Fairfax County, Virginia, agrees to convey fee simple title to the property on Mason Neck in

excess of 800 acres depicted on the map dated June 2000, on file in the Office of the Director of the Bureau of Land Management, Eastern States (hereafter in this paragraph referred to as "Meadowood Farm") to the Secretary of the Interior, then the Administrator of General Services shall agree to convey to Fairfax County, Virginia, fee simple title to the property located at the Lorton Correctional Complex north of Silverbrook Road, and consisting of more than 200 acres identified in the Fairfax County Reuse Plan, dated July 26, 1999, as land available for residential development in Land Units 1 and 2 (hereafter in this paragraph referred to as the "Laurel Hill Residential Land"), the actual exchange to occur no later than December 31, 2001.

(B) *Terms and conditions.* —

(i) When Fairfax County transfers fee simple title to Meadowood Farm to the Secretary of the Interior, the Administrator of General Services shall simultaneously transfer to the County the Laurel Hill Residential Land.

(ii) The transfer of property to Fairfax County, Virginia, under sub-subparagraph (i) of this subparagraph shall be subject to such terms and conditions that the Administrator of General Services considers to be appropriate to protect the interests of the United States.

(iii) Any proceeds derived from the sale of the Laurel Hill Residential Land by Fairfax County that exceed the County's cost of acquiring, financing (which shall be deemed a County cost from the time of financing of the Meadowood Farm acquisition to the receipt of proceeds of the sale or sales of the Laurel Hill Residential Land until such time as the proceeds of such sale or sales exceed the acquisition and financing costs of Meadowood Farm to the County), preparing, and conveying Meadowood Farm and costs incurred for improving, preparing, and conveying the Laurel Hill Residential Land shall be remitted to the United States and deposited into the special fund established pursuant to paragraph (4)(A)(viii) of this subsection.

(C) *Management of property.* — The property transferred to the Secretary of the Interior under this section shall be managed by the Bureau of Land Management for public use and recreation purposes.

(h) *District of Columbia Corrections Information Council.* — Repealed.

(i) *Timing of inmate transfers.* — As soon as practicable after August 5, 1997, the Director of the Bureau of Prisons shall begin the transferring of inmates to Bureau of Prison or private contract facilities required by this section.

(Aug. 5, 1997, 111 Stat. 734, Pub. L. 105-33, § 11201; Nov. 19, 1997, 111 Stat. 734, Pub. L. 105-100, § 157(e)(2); Oct. 21, 1998, 112 Stat. 2681-600, Pub. L. 105-277, § 141; Oct. 14, 1999, D.C. Law 13-49, § 7, 46 DCR 5153; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, §§ 163, 165; Oct. 13, 2001, D.C. Law 14-29, § 2, 48 DCR 7084; Jan. 30, 2004, D.C. Law 15-62, § 3, 50 DCR 6574; Oct. 2, 2010, D.C. Law 18-233, § 2(a), 57 DCR 4514.)

Section references. — This section is referenced in § 24-102.

Effect of amendments. — Section 141 of Public Law 105-277 redesignated the section's second subsection (g), codified as (g-1), as subsection (h); and redesignated (h) as (i).

Section 163 of Public Law 106-522 added (g)(4)(A)(vi); and redesignated (g)(4)(A)(vi)

through (ix) as (g)(4)(A)(vii) through (x), respectively.

Section 165 of Public Law 106-522 added (g)(6).

D.C. Law 14-29 rewrote subsec. (h) which had read:

"(h) District of Columbia Corrections Information Council. —

"(1) Establishment.—There is established a council to be known as the District of Columbia Correction Information Council (hereafter referred to as 'Council').

"(2) Membership.—The Council shall be composed of 3 members appointed as follows: (A) Two individuals appointed by the District of Columbia. (B) One individual appointed by the Council of the District of Columbia. (3) Compensation.—Members of the Council may not receive pay, allowances, or benefits by reason of their service on the Council. (4) Duties.—The Council shall report to Director of the Bureau of Prisons with advice and information regarding matters affecting the District of Columbia sentenced felon population."

D.C. Law 15-62 added (h)(4)(B-i).

D.C. Law 18-233 repealed (h).

Emergency legislation.

For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 18-233. — Law 18-233, the "Corrections Information Council Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-404, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 20, 2010, and May 4, 2010, respectively. Became law without signature of the Mayor on May 22, 2010, it was assigned Act No. 18-406 and transmitted to both Houses of Congress for its review. D.C. Law 18-233 became effective on October 2, 2010.

Editor's notes.

Section 3 of D.C. Law 18-233 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, but no earlier than June 1, 2011.

According to the Office of the Budget Director, as of Feb. 15, 2012, D.C. Law 18-233 had not been funded. D.C. Law 18-233, § 3, was repealed by D.C. Law 19-168, § 7011.

Section 7016 of D.C. Law 19-168 provided that Sections 7001, 7004, 7007, 7009, 7011, and 7015 of the act shall apply as of June 19, 2012.

CASE NOTES

Applied in Gorbey v. United States, 54 A.3d 668, 2012 D.C. App. LEXIS 477 (2012).

§ 24-101a. District of Columbia Corrections Information Council.

(a) There is established a District of Columbia Corrections Information Council ("CIC "). The CIC shall be responsible for the inspection of all facilities housing District of Columbia inmates who are under the jurisdiction of either the Bureau of Prisons or the Department of Corrections, and for the monitoring of the conditions and treatment of District of Columbia inmates incarcerated in those facilities.

(b)(1) The CIC shall consist of a Corrections Information Council Governing Board ("Board ") as well as an Executive Director and subordinate personnel.

(2)(A) The Board shall be composed of 3 members, 2 of whom shall be appointed by the Mayor with the advice and consent of the Council, and one of whom shall be appointed by the Council.

(B) Of the members first appointed, the Mayor shall appoint one member for a one-year term. The other mayoral appointee and the Council appointee shall serve 2-year terms. Thereafter, members shall be appointed for terms of 2 years. A Board member may be reappointed. A person appointed to

fill a vacancy on the Board occurring prior to the expiration of a term shall serve for the remainder of the term or until a successor has been appointed.

(C) The Mayor shall designate the chairperson of the Board.

(D) All members shall be residents of the District of Columbia.

(E) All Board members shall serve without compensation.

(3) The Executive Director shall be the head of the office of the CIC, and shall report to the Board. The Executive Director shall have at least 3 years relevant experience in criminal justice to include matters affecting prisoner conditions of confinement. The Mayor shall appoint the Executive Director to serve for a term of 3 years. An Executive Director may be reappointed. The Board may remove the Executive Director from office for cause.

(c) The Board shall meet as necessary to conduct official business. The presence of 2 members shall constitute a quorum necessary for the CIC to take official action. The CIC may act by an affirmative vote of at least 2 members. The duties of the Board shall include:

(1) Reporting to the Director of the Bureau of Prisons and the Director of the Department of Corrections with advice and information regarding matters affecting District of Columbia inmates in the custody of the Bureau of Prisons or the Department of Corrections;

(2) Advising the Executive Director in performing his or her duties;

(3) Reviewing the findings of the Executive Director concerning the conditions of confinement of District of Columbia inmates in both the Bureau of Prisons and the Department of Corrections custody and make recommendations where appropriate;

(4) Transmitting the findings of the CIC as required under subsection (e) of this section.

(d)(1) Conducting comprehensive inspections of District of Columbia corrections facilities housing inmates, including halfway houses, the Correctional Treatment Facility, and the Central Detention Facility pursuant to § 24-211.02(b)(1);

(2) Negotiating with the Director of the Bureau of Prisons to provide access to each facility housing District of Columbia sentenced felons for the purposes of:

(A) Conducting inspections, unannounced, if possible, of all areas accessible to inmates;

(B) Conducting unmonitored interviews of inmates in areas open to inspection; and

(C) Interviewing selected staff at each facility;

(3) Conducting, on an annual basis, comprehensive inspections of at least 3 separate Bureau of Prisons facilities housing District of Columbia sentenced felons;

(4) Reviewing documents related to the conditions of confinement at each facility housing District of Columbia sentenced felons, including inmate files and records, inmate grievances, incident reports, disciplinary reports, use of force reports, medical and psychological records, administrative and policy directives of the facility, and logs, records, and other data maintained by the facility;

(5) Reporting his or her findings related to the duties of this subsection to the Board; and

(6) Producing reports as required under subsection (f) of this section.

(1) The Executive Director shall employ qualified persons or utilize the services of qualified volunteers, as necessary, to perform the work of the CIC. Subject to appropriations, the Executive Director may employ persons on a full-time or part-time basis, or retain the services of contractors for the purpose of inspecting facilities.

(2) The Executive Director shall supervise all employees and volunteers of the CIC, and shall ensure that all rules, regulations, and orders are carried out properly, and that all records of the CIC are maintained properly.

(3) Subject to approval of the Board, the Executive Director shall establish a pool of qualified persons who shall be assigned by the Executive Director to carry out the functions set forth in this section. In selecting a person to be a member of this pool, the Executive Director shall take into consideration each person's education, work experience in the correctional facility area, and general reputation for competence, impartiality, and integrity in the discharge of his responsibilities. No member of the pool shall be a current employee of the Department of Corrections or the Bureau of Prisons. For their services, the members of this pool shall be entitled to such compensation as the Executive Director, with the approval of the Board, shall determine; provided, that the compensation shall be on a per-case, not a per-hour, basis.

(f)(1) Within 60 days of the end of each fiscal year, the CIC shall transmit to the Director of the Bureau of Prisons, the Mayor, the Council, and the Director of the Department of Corrections the following reports:

(A) A report on the conditions of confinement of District of Columbia inmates in the Department of Corrections custody; and

(B) A report on each inspection of a facility housing District of Columbia sentenced felons as required in subsection (d)(3) of this section.

(2) The reports shall have been prepared by the Executive Director and approved by the Board, and shall be made available to the public.

(g) The CIC is authorized to apply for and receive grants to fund its program activities in accordance with the laws and regulations relating to grant management.

(h)(1) The Chief Financial Officer shall provide financial support services and oversight for the CIC using personnel assigned to provide financial support services and oversight for the Department of Corrections.

(2)(A) The Chief Procurement Officer shall provide contracting and procurement support services and oversight for the CIC using personnel assigned to provide contracting and procurement support services and oversight for the Department of Corrections.

(B) The CIC is authorized to contract with qualified private organizations or individuals for services in accordance with Chapter 3A of Title 2 [§ 2-351.01 et seq.].

(3) The CIC is authorized to appoint one employee to the Excepted Service established by § 1-609.01 et seq.

(i) The Mayor shall provide the CIC with adequate office space that is separate and independent from the Department of Corrections.

(Aug. 5, 1997, 111 Stat. 734, Pub. L. 105-33, § 11201, as added Oct. 2, 2010, D.C. Law 18-233, § 2(b), 57 DCR 4514; Sept. 26, 2012, D.C. Law 19-171, § 221, 59 DCR 6190.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 substituted "Chapter 3 of Title 2" for "Chapter 3A of Title 2" in (h)(2)(B).

Emergency legislation. — For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Emergency Act of 2012 (D.C. Act 19-383, June 19, 2012, 59 DCR 7764).

For temporary (90 day) repeal of section 3 of D.C. Law 18-233, see § 7011 of Fiscal Year 2013 Budget Support Congressional Review Emergency Act of 2012 (D.C. Act 19-413, July 25, 2012, 59 DCR 9290).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

Editor's notes. — Section 3 of D.C. Law 18-233 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, but no earlier than June 1, 2011. According to the Office of the Budget Director, as of Feb. 15, 2012, D.C. Law 18-233 had not been funded. D.C. Law 18-233, § 3, was repealed by D.C. Law 19-168, § 7011.

Subchapter III. Offender Supervision and Parole.

§ 24-133. Court Services and Offender Supervision Agency.

Section references. — This section is referenced in § 1-527.01, § 11-1722, § 22-4001, § 24-131, and § 24-132.

CASE NOTES

Jurisdiction.

United State Parole Commission's revoking parolee's supervised release and imposing sentence did not usurp judicial functions or violate separation-of-powers; his term of supervised release had not expired, Commission had jurisdiction over him pursuant to District of Columbia law, and federal regulations permitted revocation and imposition of sentence. Taylor v. U.S. Parole Com'n, 2012 WL 1574423 (2012).

CHAPTER 2. PRISONS AND PRISONERS.

Subchapter II. Department of Corrections

Part A

General

Sec.

Sec.

Part B

Department of Corrections Employee Mandatory Drug and Alcohol Testing

Subchapter I. Prisons.

PART A.

GENERAL.

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§ 24-201.15. Accountability for safekeeping of prisoners.

Section references. — This section is referenced in § 24-201.13.

LAW REVIEWS AND JOURNAL COMMENTARIES

Enforcing Corrections-Related Court Orders in the District of Columbia. Jonathan M. Smith, 2 D.C.L.Rev. 237, (1994).

Subchapter II. Department of Corrections.

PART A.

GENERAL.

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§ 24-211.02. Powers; promulgation of rules.

(a) Said Department of Corrections under the general direction and supervision of the Mayor of the District of Columbia shall have charge of the management and regulation of the Workhouse at Occoquan in the State of Virginia, the Reformatory at Lorton in the State of Virginia, and the Washington Asylum and Jail, and be responsible for the safekeeping, care, protection, instruction, and discipline of all persons committed to such institutions. The Department of Corrections with the approval of the Council of the District of Columbia shall have power to promulgate rules and regulations for the government of such institutions and to establish and conduct industries, farms, and other activities, to classify the inmates, and to provide for their proper treatment, care, rehabilitation, and reformation.

(a-1)(1) The Department of Corrections shall have charge of the management and operation of the Central Cellblock, located at 300 Indiana Avenue, N.W., Washington, D.C., and shall be responsible for the safekeeping, care, and protection of all persons detained at the Central Cellblock, by the Metropolitan Police Department, before their initial court appearance.

(2) Nothing in this subsection shall be construed as:

(A) Removing any authority from the Metropolitan Police Department to determine where to hold in custody any person arrested and awaiting an initial court appearance;

(B) Granting any arrest powers to any employee of the Department of Corrections performing any duty at the Central Cellblock; or

(C) Limiting any powers or authority of the Metropolitan Police Department or the Department of Corrections.

(b) The Department of Corrections shall:

(1) Provide access to the Central Detention Facility, upon request and appointment, to members of the Corrections Information Council, or their staff, agents, or designees, for the purposes of conducting:

(A) Inspections of all areas accessible to inmates; and

(B) Unmonitored interviews of inmates in areas open to inspection under subparagraph (A) of this paragraph;

(2) Provide to the Council on a quarterly basis all internal reports relating to living conditions in the Central Detention Facility, including inmate grievances, the Crystal report, the monthly report on the Priority One environmental problems and the time to repair, the monthly report of the Environmental Safety Office, the monthly report on temperature control and ventilation, and the monthly report on the jail population that includes the number of people waiting transfer to the federal Bureau of Prisons and the average number of days that inmates waited for transfer;

(3) Initiate and maintain regular afternoon and evening visiting hours at the Central Detention Facility for a minimum of 5 days a week, including Saturdays and Sundays;

(4) Develop and implement a classification system and corresponding housing plan for inmates at the Central Detention Facility; and

(5) Return to an inmate, upon the inmate's release from the Central Detention Facility, any personal identification documents collected from the inmate, including driver's licenses, birth certificates, and Social Security cards.

(6) Repealed.

(7) Repealed.

(8) Repealed.

(June 27, 1946, 60 Stat. 320, ch. 507, § 2; Jan. 30, 2004, D.C. Law 15-62,§ 4, 50 DCR 6574; July 23, 2010, D.C. Law 18-190, § 2, 57 DCR 3397; Sept. 26, 2012, D.C. Law 19-171, § 80, 59 DCR 6190; Dec. 11, 2012, D.C. Law 19-195, § 2(a), 59 DCR 10159; Dec. 24, 2013, D.C. Law 20-61, § 3002, 60 DCR 12472.)

Section references. — This section is referenced in § 24-101, § 24-101a, and § 24-251.01.

Effect of amendments.

The 2012 amendment by D.C. Law 19-171 redesignated (b)(7) and (b)(8) as (c) and (d) and made related changes; and substituted "paragraph (6) of subsection (b) of this section" for "paragraph (6) of this subsection" in the introductory language of (c).

The 2012 amendment by D.C. Law 19-195 repealed (b)(6), (7), and (8).

The 2013 amendment by D.C. Law 20-61 added (a-1).

Temporary Amendment of Section.

For temporary (225 days) amendment of this section, see § 2 of the Department of Corrections Central Cellblock Management Clarification Temporary Amendment Act of 2013 (D.C. Law 20-73, February 22, 2014, 61 DCR 32).

Emergency legislation.

For temporary (90 day) amendment of section, see § 2(a) of DOC Inmate Processing and Release Emergency Amendment Act of 2012 (D.C. Act 19-428, July 27, 2012, 59 DCR 9383).

For temporary (90 day) amendment of section, see § 2(b) of DOC Inmate Processing and Release Emergency Amendment Act of 2012 (D.C. Act 19-428, July 27, 2012, 59 DCR 9383).

For temporary repeal of (b)(6), (c), and (d), see § 2(a) of the DOC Inmate Processing and Release Emergency Amendment Act of 2012 (D.C Act 19-428, July 27, 2012, 59 DCR 9383).

For temporary repeal of (b)(6), (c), and (d), see

§ 2(a) of the DOC Inmate Processing and Release Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-509, October 26, 2012, 59 DCR 12804).

For temporary (90 days) amendment of this section, see § 3002 of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 3002 of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

For temporary (90 days) amendment of this section, see §§ 2 and 3 of the Department of Corrections Central Cellblock Management Clarification Emergency Amendment Act of 2013 (D.C. Act 20-215, November 20, 2013, 60 DCR 16520, 20 STAT 2604).

For temporary (90 days) amendment of this section, see §§ 2 and 3 of the Department of Corrections Central Cellblock Management Clarification Congressional Review Emergency Amendment Act of 2014 (D.C. Act 20-276, February 20, 2014, 61 DCR 1574).

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

Legislative history of Law 19-195. — Law 19-195, the "DOC Inmate Processing and Release Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-428. The Bill was adopted on first and second readings on June 5, 2012, and July 10, 2012, respectively. Signed by the Mayor on August 9, 2012, it was assigned Act No. 19-444 and transmitted to Congress for its review. D.C. Law 19-195 became effective on Dec. 11, 2012.

Legislative history of Law 20-61. — Law 20-61, the "Fiscal Year 2014 Budget Support Act of 2013," was introduced in Council and assigned Bill No. 20-199. The Bill was adopted on first and second readings on May 22, 2013, and June 26, 2013, respectively. Signed by the Mayor on Aug. 28, 2013, it was assigned Act No. 20-157 and transmitted to Congress for its review. D.C. Law 20-61 became effective on Dec. 24, 2013.

Short title. — Section 3001 of D.C. Law 20-61 provided that Subtitle A of Title III of the act may be cited as the "Department of Corrections Central Cellblock Management Amendment Act of 2013".

Editor's notes. — Section 3003 of D.C. Law 20-61 provided that all property, records, unexpended balances of appropriations, allocations, and other funds required for the management and operation of the Central Cellblock at 300 Indiana Avenue, N.W., Washington, D.C. are transferred from the Metropolitan Police Department to the Department of Corrections.

Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

LAW REVIEWS AND JOURNAL COMMENTARIES

Life At Lorton: An Examination Of Prisoners' Rights At The District Of Columbia Correctional Facilities, 5 Boston University Public Interest Law Journal 165.

§ 24-211.02a. Processing and release of inmates from the Central Detention Facility.

(a) The Department of Corrections shall process and release inmates from the Central Detention Facility as follows:

(1) Except as provided in paragraphs (2) and (3) of this subsection, the Department of Corrections shall have the obligation to ensure that all inmates are released by 10:00 p.m.; provided, that such obligation does not apply to inmates who are ordered released by the court between 10:00 p.m. and 7:00 a.m. or to inmates who are being released into the custody of another jurisdiction. The Department of Corrections shall have the obligation to abide by subsection (c) of this section for all inmates being released between 10 p.m. and 7 a.m., including those who are ordered released by the court.

(2) For an inmate ordered released pursuant to a court order, the inmate shall be released within 5 hours of transfer from the custody of the United

States Marshals Service into the custody of the Department of Corrections, unless the inmate is to continue in confinement pursuant to another charge or warrant; provided, that the Department of Corrections has the obligation to release inmates by 10:00 p.m.

(3) For an inmate who has completed his or her sentence, and for whom there is no other outstanding charge or warrant, the inmate shall be released before noon on his or her scheduled release date.

(b) The Department of Corrections shall establish, in coordination with the courts and the United States Marshals Service, procedures to ensure that inmates who have been ordered released by the court are returned to the Central Detention Facility as promptly as possible.

(c) For all inmates released between 10 p.m. and 7 a.m., the Department of Corrections shall ensure, before release, that:

(1)(A) The inmate has a residence or other housing that the inmate is able to access and the inmate has agreed, in writing, to access the residence or housing at the time of the inmate's release; or

(B) A shelter is able and willing to receive the inmate at the time of the inmate's release and the inmate has agreed, in writing, to access the shelter at the time of the inmate's release;

(2) The inmate is provided with the clothing that the inmate wore upon intake to the Central Detention Facility or, if that clothing is not available, other clothing provided by the Department of Corrections; provided, that the clothing is:

(A) Appropriate for the weather;

(B) Not a jumpsuit; and

(C) Typical of street clothing worn by citizens in public;

(3) Written verification is obtained from the Central Detention Facility's healthcare provider ("provider") that, upon release, the inmate has a 7-day supply of all prescription medications that the inmate is to continue taking upon release from custody and that the inmate has received release counseling, if medically recommended, from the provider within the preceding 7 days;

(4) If the inmate is a sentenced inmate, the inmate has been provided, within the 7 days before release, release counseling on access to benefits and services available in the District to facilitate reentry;

(5) The inmate has transportation immediately available upon the inmate's release from the Central Detention Facility to transport the inmate to the housing identified in paragraph (1) of this subsection by:

(A) A member of the Department of Corrections transportation unit;

(B) A taxi, at the Department of Corrections' expense; or

(C) A friend or family member,

(6) The inmate has been provided with the option of remaining within a Department of Corrections facility until release at 7 a.m. If an inmate chooses to do so, the Department of Corrections must obtain a written waiver from the inmate stating that the inmate has knowingly, intelligently, and voluntarily decided to remain in a Department of Corrections facility until 7:00 a.m.; and

(7) The warden of the Central Detention Facility has certified, in writing, that the requirements of this subsection have been met.

(d)(1) The Department of Corrections shall maintain an accurate record of the date and time of each inmate's release from the Central Detention Facility that shall be a matter of public record and that may be audited, upon request, by the Inspector General for the District of Columbia or the District of Columbia Auditor.

(2) The Department of Corrections shall provide to the Council, on a quarterly basis, a list of all inmates who have been released in violation of this section. The list shall include the following information for each inmate released:

(A) The custody status of the inmate before release (e.g., pre-trial detention, sentenced misdemeanant);

(B) The reason for the inmate's release (e.g., completion of sentence, court order);

(C) The date and time the Department of Corrections received the release order from the court or other authority; and

(D) The date and time of the release.

(e)(1) For each inmate released after 10 p.m. on the date of the expiration of his or her sentence or on the date he or she is ordered released by the court, the Department of Corrections shall be fined an initial $1,000, with an additional fine of $1,000 for each 24-hour period that the inmate is overdetained.

(2) The Office of the Chief Financial Officer shall transfer funds in accordance with paragraph (1) of this subsection to the Settlements and Judgments fund to support litigation related to the Department of Corrections.

(June 27, 1946, 60 Stat. 320, ch. 507, § 2a, as added Dec. 11, 2012, D.C. Law 19-195, § 2(b), 59 DCR 10159.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-195 added this section.

Emergency legislation. — For temporary addition of section, see § 2(b) of the DOC Inmate Processing and Release Emergency Amendment Act of 2011 (D.C. Act 19-129, August 1, 2011, 58 DCR 6784).

For temporary addition of section, see § 2(b) of the DOC Inmate Processing and Release Emergency Amendment Act of 2012 (D.C. Act 19-428, July 27, 2012, 59 DCR 9383).

For temporary addition of section, see § 2(b) of the DOC Inmate Processing and Release Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-509, October 26, 2012, 59 DCR 12804).

Legislative history of Law 19-195. — See note to § 24-211.02.

§ 24-211.06. Charge against United States for care of convicts.

Emergency legislation. — For temporary (90 day) addition of section, see § 2 of Immigration Detainer Compliance Emergency Amendment Act of 2012 (D.C. Act 19-379, June 15, 2012, 59 DCR 7383).

§ 24-211.07. District compliance with federal immigration detainers.

(a) The District of Columbia is authorized to comply with civil detainer requests from United States Immigration and Customs Enforcement ("ICE") by holding inmates for an additional 24-hour period, excluding weekends and

holidays, after they would otherwise be released, but only in accordance with the requirements set forth in subsection (b) of this section.

(b) Upon written request by an ICE agent to detain a District of Columbia inmate for suspected violations of federal civil immigration law, the District shall exercise discretion regarding whether to comply with the request and may comply only if:

(1) There exists a prior written agreement with the federal government by which all costs incurred by the District in complying with the ICE detainer shall be reimbursed; and

(2) The individual sought to be detained:

(A) Is 18 years of age or older; and

(B) Has been convicted of:

(i) A dangerous crime as defined in § 23-1331(3) or a crime of violence as defined in § 23-1331(4), for which he or she is currently in custody;

(ii) A dangerous crime as defined in § 23-1331(3) or a crime of violence as defined in § 23-1331(4) within 10 years of the detainer request, or was released after having served a sentence for such dangerous crime or crime of violence within 5 years of the request, whichever is later; or

(iii) A crime in another jurisdiction which if committed in the District of Columbia would qualify as an offense listed in § 23-1331(3) or (4); provided, that the conviction occurred within 10 years of the detainer request or the individual was released after having served a sentence for such crime within 5 years of the request, whichever is later.

(c) Notwithstanding subsection (b)(2)(B)(ii) and (iii) of this section, a detainer request for an individual who has been convicted of a homicide crime, pursuant to § 22-2101 et seq., or a crime in another jurisdiction which if committed in the District of Columbia would qualify as a homicide crime, may be honored regardless of when the conviction occurred.

(d)(1) The District shall not provide to any ICE agent an office, booth, or any facility or equipment for a generalized search of or inquiry about inmates or permit an ICE agent to conduct an individualized interview of an inmate without giving the inmate an opportunity to have counsel present.

(2) This subsection shall not be construed to establish a right to counsel that does not otherwise exist in law.

(June 27, 1946, ch. 507, § 7, as added Dec. 11, 2012, D.C. Law 19-194, § 2, 59 DCR 10153.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-194 added this section.

Emergency legislation. — For temporary addition of section, see § 2 of the Immigration Detainer Compliance Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-475, October 9, 2012, 59 DCR 12098), applicable as of September 13, 2012.

Legislative history of Law 19-194. — Law 19-194, the "Immigration Detainer Compliance Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-585. The Bill was adopted on first and second readings on June 5, 2012, and July 10, 2012, respectively. Signed by the Mayor on August 8, 2012, it was assigned Act No. 19-442 and transmitted to Congress for its review. D.C. Law 19-194 became effective on Dec. 11, 2012.

Editor's notes. — Former § 24-211.07 was omitted from this part.

PART B.

DEPARTMENT OF CORRECTIONS EMPLOYEE MANDATORY DRUG AND ALCOHOL TESTING.

§ 24-211.23. Testing methodology.

(a) Testing shall be performed by an outside contractor. The contractor shall be a laboratory certified by the United States Department of Health and Human Services ("HHS") to perform job related drug and alcohol forensic testing.

(b) For random testing, the contractor shall come on-site to the Department's institutions and shall collect urine specimens and split the samples. The contractor shall perform enzyme-multiplied-immunoassay technique ("EMIT") testing on one sample and store the split sample. Any positive EMIT test shall then be confirmed by the contractor using gas chromatography/mass spectrometry ("GCMS") methodology.

(c) Any Department employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation.

(d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyzer.

(e) Any Department employee who operates a motor vehicle in the District of Columbia shall be deemed to have given his or her consent, subject to conditions in this subchapter, to the testing of the person's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable suspicion or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person was operating or in physical control of a motor vehicle within the District while that person was intoxicated as defined by § 50-2206.01(9), while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the ability to operate a motor vehicle was impaired by the consumption of an intoxicating beverage.

(f) A breathalyzer shall be deemed positive by the Department's testing contractor if the contractor determines that the alcohol concentration of the employee's breath meets the definition of intoxicated as defined by § 50-2206.01(9). A positive breathalyzer test shall be grounds for termination of employment in accordance with subchapter I of Chapter 6 of Title 1.

(Sept. 20, 1996, D.C. Law 11-158, § 4, 43 DCR 3702; Apr. 13, 1999, D.C. Law 12-227, § 3, 46 DCR 502; Mar. 2, 2007, D.C. Law 16-195, § 5, 53 DCR 8675; Apr. 27, 2013, D.C. Law 19-266, § 305, 59 DCR 12957.)

Effect of amendments.
The 2013 amendment by D.C. Law 19-266 substituted "person was intoxicated as defined by § 50-2206.01(9)" for "person's alcohol con-

centration was 0.08 grams or more per 210 liters of breath" in (e); and substituted "the alcohol concentration of the employee's breath meets the definition of intoxicated as defined by § 50-2206.01(9)" for "210 liters of the employee's breath contains 0.08 grams or more of alcohol" in (f).

Emergency legislation.

For temporary amendment of (e) and (f), see § 305 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Amendment Act of 2012 (D.C Act 19-508, October 26, 2012, 59 DCR 13325).

For temporary (90 days) amendment of this section, see § 305 of the Comprehensive Impaired Driving and Alcohol Testing Program Congressional Review Emergency Act of 2013 (D.C. Act 20-3, January 29, 2013, 60 DCR 2762, 20 DCSTAT 410).

For temporary (90 days) amendment of this section, see § 305 of the Comprehensive Impaired Driving and Alcohol Testing Program Second Congressional Review Emergency Act of 2013 (D.C. Act 20-51, April 17, 2013, 60 DCR 6344, 20 DCSTAT 1360).

Legislative history of Law 19-266. — Law 19-266, the "Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

CHAPTER 3. PROBATION.

§ 24-304. Discharge from or continuance of probation; modification or revocation of order.

Section references. — This section is referenced in § 24-241.01.

CASE NOTES

Jurisdiction.

Factual inconsistency between police officer's testimony at trial on charge against probationer of possession of marijuana with intent to distribute (PMID), that marijuana was in a closed container within car, and officer's testimony at show-cause hearing that resulted in revocation of probation based on the same drug charge, that the marijuana he found had been in plain view in car, did not violate probationer's due process rights; whether the marijuana was found inside car's lidded center console or in the open area, did not factor into trial court's conclusion that probationer's probation should be revoked because he had possessed the marijuana, and there were several other facts that evidenced probationer's constructive possession of the marijuana found both in the console and the trunk. Morgan v. United States, 47 A.3d 532, 2012 D.C. App. LEXIS 141 (2012).

CHAPTER 4. INDETERMINATE SENTENCES AND PAROLES.

Subchapter I. General Provisions

Subchapter III. Medical and Geriatric Parole

Subchapter I. General Provisions.

§ 24-403.01. Sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000.

(a) For any felony committed on or after August 5, 2000, the court shall impose a sentence that:

(1) Reflects the seriousness of the offense and the criminal history of the offender;

(2) Provides for just punishment and affords adequate deterrence to potential criminal conduct of the offender and others; and

(3) Provides the offender with needed educational or vocational training, medical care, and other correctional treatment.

(b)(1) If an offender is sentenced to imprisonment, or to commitment pursuant to § 24-903, under this section, the court shall impose a period of supervision ("supervised release") to follow release from the imprisonment or commitment.

(2) If the court imposes a sentence of more than one year, the court shall impose a term of supervised release of:

(A) Five years, if the maximum term of imprisonment authorized for the offense is 25 years or more; or

(B) Three years, if the maximum term of imprisonment authorized for the offense is more than one year, but less than 25 years.

(3) If the court imposes a sentence of one year or less, the court shall impose a term of supervised release of:

(A) Not more than 5 years, if the maximum term of imprisonment authorized for the offense is 25 years or more; or

(B) Not more than 3 years, if the maximum term of imprisonment authorized for the offense is more than one year, but less than 25 years.

(4) In the case of a person sentenced for an offense for which registration is required by the Chapter 40 of Title 22, the court may, in its discretion, impose a longer term of supervised release than that required or authorized by paragraph (2) or (3) of this subsection, of:

(A) Not more than 10 years; or

(B) Not more than life if the person is required to register for life.

(5) The term of supervised release commences on the day the offender is released from imprisonment, and runs concurrently with any federal, state, or local term of probation, parole, or supervised release for another offense to which the offender is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the offender is imprisoned in connection with a conviction for a federal, state, or local crime unless the period of imprisonment is less than 30 days.

(6) Offenders on supervised release shall be subject to the authority of the United States Parole Commission until completion of the term of supervised release. The Parole Commission shall have and exercise the same authority as is vested in the United States District Courts by 18 U.S.C. § 3583(d)-(i), except that:

(A) The procedures followed by the Parole Commission in exercising such authority shall be those set forth in chapter 311 [repealed] of title 18 of the United States Code; and

(B) An extension of a term of supervised release under 18 U.S.C. § 3583(e)(2) may be ordered only by the court upon motion from the Parole Commission.

(7) An offender whose term of supervised release is revoked may be imprisoned for a period of:

(A) Not more than 5 years, if the maximum term of imprisonment authorized for the offense is life or the offense is specifically designated as a Class A felony;

(B) Not more than 3 years, if the maximum term of imprisonment authorized for the offense is 25 years or more, but less than life and the offense is not specifically designated as a Class A felony;

(C) Not more than 2 years, if the maximum term of imprisonment authorized for the offense is 5 years or more, but less than 25 years; or

(D) Not more than 1 year, if the maximum term of imprisonment authorized for the offense is less than 5 years.

(b-1) If the maximum term of imprisonment authorized for an offense is a term of years, the term of imprisonment or commitment imposed by the court shall not exceed the maximum term of imprisonment authorized for the offense less the maximum term of imprisonment authorized upon revocation of supervised release pursuant to subsection (b)(7) of this section. If the maximum term of imprisonment authorized for the offense is up to life or if an offense is specifically designated as a Class A felony, the maximum term of imprisonment authorized upon revocation of supervised release pursuant to subsection (b)(7) shall not be deducted from the maximum term of imprisonment or commitment authorized for such offense.

(b-2)(1) The court may impose a sentence in excess of 60 years for first degree murder or first degree murder while armed, 40 years for second degree murder or second degree murder while armed, or 30 years for armed carjacking, first degree sexual abuse, first degree sexual abuse while armed, first degree child sexual abuse or first degree child sexual abuse while armed, only if:

(A) Thirty-days prior to trial or the entry of a plea of guilty, the prosecutor files an indictment or information with the clerk of the court and a copy of such indictment or information is served on the person or counsel for the person, stating in writing one or more aggravating circumstances to be relied upon; and

(B) One or more aggravating circumstances exist beyond a reasonable doubt.

(2) Aggravating circumstances for first degree murder are set forth in § 22-2104.01. Aggravating circumstances for first degree sexual abuse and first degree child sexual abuse are set forth in § 22-3020. In addition, for all offenses, aggravating circumstances include:

(A) The offense was committed because of the victim's race, color, religion, national origin, sexual orientation, or gender identity or expression (as defined in § 2-1401.02(12A);

(B) The offense was committed because the victim was or had been a witness in any criminal investigation or judicial proceeding or was capable of providing or had provided assistance in any criminal investigation or judicial proceeding;

(C) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

(D) The offense was especially heinous, atrocious, or cruel;

(E) The offense involved a drive-by or random shooting;

(F) The offense was committed after substantial planning;

(G) The victim was less than 12 years old or more than 60 years old or vulnerable because of mental or physical infirmity; or

(H) Except where death or serious bodily injury is an element of the offense, the victim sustained serious bodily injury as a result of the offense.

(3) This section does not limit the imposition of a maximum sentence of up to life imprisonment without possibility of release authorized by § 22-1804a; § 22-2104.01; § 22-2106; and § 22-3020.

(c) A sentence under this section of imprisonment, or of commitment pursuant to § 24-903, shall be for a definite term, which shall not exceed the maximum term allowed by law or be less than any minimum term required by law. A person sentenced under this section to imprisonment, or to commitment pursuant to § 24-903, for such a felony shall serve the term of imprisonment or commitment specified in the sentence, less any time credited toward service of the sentence under subsection (d) of this section.

(d) A person sentenced to imprisonment, or to commitment pursuant to § 24-903, under this section may receive good time credit toward service of the sentence only as provided in 18 U.S.C. § 3624(b).

(d-1)(1) A person sentenced to imprisonment under this section for a nonviolent offense may receive up to a one-year reduction in the term the person must otherwise serve if the person successfully completes a substance abuse treatment program in accordance with 18 U.S.C. § 3621(e)(2).

(2) For the purposes of this subsection, the term "nonviolent offense" means any crime other than those included within the definition of "crime of violence" in § 23-1331(4).

(e) The sentence imposed under this section on a person convicted of assault with intent to commit first or second degree sexual abuse or child sexual abuse in violation of § 22-401, or of armed robbery in violation of § 22-4502, shall be not less than 2 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in § 22-4501, providing for the control of dangerous weapons in the District of Columbia. The sentence imposed under this section on a person convicted of first or second degree sexual abuse or child sexual abuse in violation of § 22-3002, § 22-3003, or § 22-3008 through § 22-3010, shall not be less than 7 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence, as so defined.

(f) The sentence imposed under this section shall not be less than 1 year for a person convicted of:

(1) Assault with a dangerous weapon on a police officer in violation of § 22-405, occurring after the person has been convicted of a violation of that

section or of a felony, either in the District of Columbia or in another jurisdiction;

(2) Illegal possession of a pistol [now "firearm"] in violation of § 22-4503, occurring after the person has been convicted of violating that section; or

(3) Possession of the implements of a crime in violation of § 22-2501, occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction.

(g) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 15, 1932, 47 Stat. 697, ch. 492, § 3a, as added Oct. 10, 1998, D.C. Law 12-165, § 2, 45 DCR 2980; June 8, 2001, D.C. Law 13-302, § 8(a), 47 DCR 7249; June 19, 2001, D.C. Law 13-313, § 21(c) 48 DCR 1873; May 24, 2005, D.C. Law 15-357, § 302, 52 DCR 1999; June 25, 2008, D.C. Law 17-177, § 14, 55 DCR 3696; June 11, 2013, D.C. Law 19-317, § 312, 60 DCR 2064.)

Section references. — This section is referenced in § 22-722, § 22-1804a, § 22-2001, § 22-2101, § 22-2102, § 22-2103, § 22-2104, § 22-2803, § 22-3002, § 22-3008, § 22-4502, and § 22-4515a.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (g).

Emergency legislation.

For temporary (90 days) amendment of this section, see § 312 of the Criminal Fine Proportionality Emergency Act of 2013 (D.C. Act 20-45, April 1, 2013, 60 DCR 5400, 20 DCSTAT 1300).

Legislative history of Law 19-317. — See note to § 22-3571.01.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 24-404. Authorization of parole; custody; discharge.

Section references. — This section is referenced in § 5-113.05.

CASE NOTES

Supervision of parolees.

United States Parole Commission was well within its authority to initiate revocation proceedings against parolee, notwithstanding parolee's claim that he should have been released from parole prior to his probation revocation hearing, where parolee was under the Commission's supervision at the time of the alleged violation. Ferguson v. Wainwright, 849 F.Supp.2d 1, 2012 U.S. Dist. LEXIS 42184 (2012).

§ 24-406. Hearing after arrest; confinement in non-District institution.

Section references. — This section is referenced in § 5-113.05 and § 24-221.03.

CASE NOTES

ANALYSIS

Good conduct credit.
Retroactive application.

Good conduct credit.

Writ of mandamus would be issued to require United States Parole Commission to reexamine its decision to rescind parolee's credit for time spent on parole in light of the Equitable Street Time Credit Amendment Act. Ferguson v. Wainwright, 849 F.Supp.2d 1, 2012 U.S. Dist. LEXIS 42184 (2012).

Retroactive application.

Amendment to District of Columbia regulation to allow days spent on parole to be counted toward fulfillment of sentence of incarceration under certain defined circumstances did not apply retroactively to District of Columbia parolee whose parole was revoked before amendment took effect. Washington v. U.S. Parole Com'n, 2012 WL 1606344 (2012).

Subchapter III. Medical and Geriatric Parole.

§ 24-467. Exceptions.

Persons convicted of first degree murder or persons sentenced for crimes committed when armed under § 22-4502, or under § 22-4504(b), or under § 22-2803, shall not be eligible for geriatric parole or geriatric suspension of sentence.

(May 15, 1993, D.C. Law 9-271, § 8, 40 DCR 792; Feb. 5, 1994, D.C. Law 10-68, § 57, 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 18, 41 DCR 5193; May 25, 1995, D.C. Law 10-258, § 2, 42 DCR 238; June 15, 2013, D.C. Law 19-318, § 2(a), 59 DCR 12469.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-318 substituted "or under § 22-2803" for "and § 22-2803"; and substituted "eligible for geriatric parole or geriatric suspension of sentence" for "eligible for geriatric or medical parole."

Legislative history of Law 19-318. — Law 19-318, the "Compassionate Release Authorization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-525. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 10, 2012, it was assigned Act No. 19-479 and transmitted to Congress for its review on Nov. 1, 2012, and re-transmitted on March 5, 2013. D.C. Law 19-318 became effective on June 15, 2013.

§ 24-468. Medical and geriatric suspension of sentence.

(a)(1) Upon a motion by the Director of the Federal Bureau of Prisons, the court may suspend execution of the sentence of any person convicted under the District of Columbia Official Code of a felony or of a felony and a misdemeanor committed on or after August 5, 2000, and sentenced to a determinate term of imprisonment which is not subject to parole and, notwithstanding § 16-710(b), shall impose a period of probation to follow release equal to the period of incarceration that was suspended. A copy of the motion shall be served on the prosecutor and counsel for the inmate.

(2) Upon a motion by the Director of the Department of Corrections, the court may suspend execution of the sentence of any person convicted under the District of Columbia Official Code of a felony committed on or after August 5, 2000, who has not commenced serving that sentence at the Bureau of Prisons or a Bureau of Prisons' contract facility, including the Department of Corrections, or of any person convicted under the District of Columbia Official Code of a misdemeanor committed on or after August 5, 2000, and, notwithstanding § 16-710(b), shall impose a period of probation to follow release equal to the period of incarceration that was suspended. A copy of the motion shall be served on the prosecutor and counsel for the inmate. This paragraph shall not apply to any person who is physically present in a Department of Corrections

facility pursuant to a writ of habeas corpus, at the request of a prosecutor or defense attorney, or because of a parole or supervised release detainer.

(b)(1) The court may suspend execution of a sentence pursuant to subsection (a)(1) or (a)(2) of this section only if, after giving the prosecutor and counsel for the inmate notice and an opportunity to be heard, the court finds that:

(A) The inmate is permanently incapacitated or terminally ill because of a medical condition that was not known to the court at the time of sentencing, and the release of the inmate under supervision is not incompatible with public safety; or

(B) The inmate is 65 years or older and has a chronic infirmity, illness, or disease related to aging, and the release of the inmate under supervision is not incompatible with public safety.

(2) The court shall act expeditiously on any motion submitted by the Director of the Bureau of Prisons or the Director of the Department of Corrections. If the court receives a request directly from an inmate or a representative of an inmate, the court may refer the matter to the Federal Bureau of Prisons or the Department of Corrections, as the case may be, for a motion or a statement of reasons as to why a motion will not be filed.

(May 15, 1993, D.C. Law 9-271, § 8a, as added Oct. 10, 1998, D.C. Law 12-165, § 5, 45 DCR 2980; June 15, 2013, D.C. Law 19-318, § 2(b), 59 DCR 12469.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-318 rewrote the section.

Legislative history of Law 19-318. — See note to § 24-467.

CHAPTER 5. INSANE DEFENDANTS.

§ 24-501. Acquittal by reason of insanity; release after confinement; expenses of confinement; inconsistent statutes superseded; escaped persons; insanity defense; motions for relief.

Section references. — This section is referenced in § 2-1602 and § 7-1301.03.

LAW REVIEWS AND JOURNAL COMMENTARIES

The Guilty But Mentally Ill Verdict: An Idea Whose Time Should Not Have Come. Christopher Slobogin, 53 Geo.Wash.L.Rev. 494 (1985).

CHAPTER 5A. EVALUATION AND TREATMENT OF INCOMPETENT DEFENDANTS.

§ 24-531.01. Definitions.

For the purposes of this chapter, the term:

(1) "Competence" means that a defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and has a rational, as well as a factual, understanding of the proceedings against him or her.

(2) "Court" or "Superior Court" means the Superior Court of the District of Columbia.

(2A) "DDS" means the Department on Disability Services.

(3) "Defendant" means a defendant in a criminal case or a respondent in a transfer proceeding.

(4) "DMH" means the Department of Mental Health.

(5) "Incompetent" means that, as a result of a mental disease or defect, a defendant does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as a factual, understanding of the proceedings against him or her.

(6) "Inpatient treatment facility" means:

(A) Saint Elizabeths Hospital;

(B) Any other physically secure hospital for the examination or treatment of persons with mental illness; or

(C) Any physically secure or staff-secure facility for the examination, treatment, or habilitation of persons with intellectual disabilities.

(7) Repealed.

(8) "Transfer proceeding" means a proceeding pursuant to § 16-2307 to transfer a respondent who is alleged to be a delinquent in a juvenile case from the Family Court to the Criminal Division of the Superior Court of the District of Columbia to face adult criminal charges.

(9) "Treatment" means the services or supports provided to persons with mental illness or intellectual disabilities, including services or supports that are offered or ordered to restore a person to competence, to assist a person in becoming competent, or to ensure that a person will be competent.

(10) "Treatment provider" means:

(A) The Department of Mental Health;

(B) The DDS;

(C) An inpatient treatment facility as defined in paragraph (6) of this section; or

(D) Any other entity or individual designated by the DMH or DDS to provide evaluation, examination, treatment, or habilitation pursuant to this chapter that:

(i) Is duly licensed or certified under the laws of the District of Columbia to provide services or supports to persons with mental illness or intellectual disabilities, or both; and

(ii) Has entered into an agreement with the District to provide mental health services or mental health supports or to provide services or supports to persons with intellectual disabilities.

(May 24, 2005, D.C. Law 15-358, § 101, 52 DCR 2015; Sept. 26, 2012, D.C. Law 19-169, § 22(a), 59 DCR 5567.)

Section references. — This section is referenced in § 16-2307.

Effect of amendments. — The 2012 amendment by D.C. Law 19-169 added (2A); substituted "intellectual disabilities" for "mental retardation" wherever it appears in (6)(C), (9), and (10); repealed (7), which formerly read: "'MRDDA' means the Mental Retardation and Developmental Disabilities Administration"; substituted "DDS" for "The Mental Retardation and Developmental Disabilities Administration" in (10)(B); and substituted "DDS" for "MRDDA" in the introductory language of (10)(D).

Legislative history of Law 19-169. — Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-189. The Bill was adopted on first and second readings on Mar. 6, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to Congress for its review. D.C. Law 19-169 became effective on Sept. 26, 2012.

Editor's notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

CASE NOTES

ANALYSIS

Competence.
Competence.
Competency finding upheld.

Competence.

Court properly found codefendant competent to stand trial based on an evaluation at a hospital, corroboration by codefendant's satisfactory behavior at trial, his responses to an inquiry, and a doctor's post-trial report and assessment; counsel's report of communication problems, by itself, did not suffice to raise a substantial doubt about his competence to stand trial, where the evidence showed defendant improved and was competent by the time of trial. Hargraves v. United States, 59 A.3d 934, 2013 D.C. App. LEXIS 13 (2013), vacated by 62 A.3d 107, 2013 D.C. App. LEXIS 68 (D.C. 2013), superseded by 62 A.3d 107, 2013 D.C. App. LEXIS 69 (D.C. 2013).

Competence.

Record supported the finding that defendant failed to prove by a preponderance of the evidence that he was not competent to stand trial because the report of two doctors stated that it seemed apparent that defendant was able to assist his attorney with the case; in crediting the doctors' opinion, the trial court remarked that their views were entitled to great weight because, in addition to reviewing defendant's files, they studied the transcript and listened to the audio recording of his trial. Hooker v. United States, 70 A.3d 1197, 2013 D.C. App. LEXIS 410 (2013).

Trial court did not violate appellant's due process right to a fair trial by not ordering a competency examination sua sponte, as the record showed that he participated intelligently and vigorously in his defense. Mitchell v. United States, 80 A.3d 962, 2013 D.C. App. LEXIS 795 (2013).

Competency finding upheld.

Trial court did not violate the District of Columbia Incompetent Defendants Criminal Commitment Act of 2004 (Act), D.C. Code § 24-531.01 et seq., or the Due Process Clauses of the Fifth and Fourteenth Amendments, U.S. Const. amends. V and XIV, in ruling that defendant was competent to stand trial where: (1) despite the initial evaluations of incompetency and defendant's deterioration during his stays at the jail, he evidently responded favorably to the inpatient treatment and medication provided at a hospital to help him attain competency; (2) having arranged for defendant to remain at the hospital instead of returning him to the jail, the judge had reason to believe defendant would maintain competency through the trial; (3) defendant and his counsel did not shoulder the burden of proving otherwise; and (4) while the Act stated that the court shall hold a hearing, the procedure could be modified with the parties' consent, and neither party objected so the court, without holding a hearing, could enter an order adjudicating defendant to be competent based upon the certification of the examining psychiatrist. Hargraves v. United States, 62 A.3d 107, 2013 D.C. App. LEXIS 69 (2013), writ of certiorari denied by 134 S. Ct. 277, 187 L. Ed. 2d 200, 2013 U.S. LEXIS 6454, 82 U.S.L.W. 3187 (U.S. 2013).

§ 24-531.03. Competence examinations.

Section references. — This section is referenced in § 24-531.02 and § 24-531.09.

CASE NOTES

Retrospective competency examination.
Trial court's decision to order a retrospective competency examination was a proper exercise of its discretion because at no point was it required or even permitted to rely exclusively on the "incompetency" conclusion in a psychologist's preliminary screening report; at the time the trial court ordered the retrospective examination, the time that had passed since defendant's trial was not so long as to call into question the feasibility of a retrospective examination. Hooker v. United States, 70 A.3d 1197, 2013 D.C. App. LEXIS 410 (2013).

§ 24-531.04. Initial competence determination.

Section references. — This section is referenced in § 24-531.03, § 24-531.05, and § 24-531.08.

CASE NOTES

Defendant found to be competent.
Court properly found codefendant competent to stand trial based on an evaluation at a hospital, corroboration by codefendant's satisfactory behavior at trial, his responses to an inquiry, and a doctor's post-trial report and assessment; counsel's report of communication problems, by itself, did not suffice to raise a substantial doubt about his competence to stand trial, where the evidence showed defendant improved and was competent by the time of trial. Hargraves v. United States, 59 A.3d 934, 2013 D.C. App. LEXIS 13 (2013), vacated by 62 A.3d 107, 2013 D.C. App. LEXIS 68 (D.C. 2013), superseded by 62 A.3d 107, 2013 D.C. App. LEXIS 69 (D.C. 2013).

§ 24-531.05. Competence treatment.

(a)(1) If the court makes a finding pursuant to § 24-531.04(c)(1)(B)(i), the court may order the defendant to participate in treatment for restoration of competence on an inpatient or outpatient basis. The court shall order treatment in the least restrictive setting consistent with the goal of restoration of competence.

(2) The court may order inpatient treatment if it finds that:

(A) Placement in an inpatient treatment facility setting is necessary in order to provide appropriate treatment; or

(B) The defendant is unlikely to comply with an order for outpatient treatment.

(3) If the court orders treatment on an outpatient basis, it shall direct DMH or DDS, or both, to designate an appropriate treatment provider. If the court orders treatment on an inpatient basis it shall commit the defendant to Saint Elizabeths Hospital or direct DMH or DDS, or both, to designate an appropriate inpatient treatment facility.

(b) Except as provided in subsections (c) and (d) of this section, the court may order the defendant to undergo competence treatment on an inpatient basis for one or more periods of time, not to exceed 180 days in the aggregate.

(c) Except as provided in subsection (d) of this section, the court may order a defendant charged with a crime of violence, as defined in § 23-1331(4), to

undergo competence treatment on an inpatient basis for one or more reasonable periods of time, not to exceed 180 days each, if the court finds:

(1) There is a substantial probability that within the period of time to be ordered the defendant will attain competence or make substantial progress toward that goal; and

(2) Inpatient treatment is the least restrictive setting based on the criteria set forth in subsection (a) of this section.

(d)(1) Excluding extended treatment pending the completion of civil commitment proceedings ordered pursuant to § 24-531.06(c)(4) or § 24-531.07(a)(2), inpatient treatment may last no longer than the maximum possible sentence that the defendant could have received if convicted of the pending charges.

(2) If, during inpatient treatment ordered to restore a defendant to competence, the maximum possible sentence the defendant could have received if convicted of the pending charges expires, the court shall either release the defendant or, where appropriate, enter an order for extended treatment pursuant to § 24-531.06(c)(4) or § 24-531.07(a)(2).

(3) The defendant shall be awarded credit against any term of imprisonment imposed after being found competent for any time during which he was committed to an inpatient treatment facility for either a competence examination or competence treatment.

(e)(1) The court may order the defendant to undergo competence treatment on an outpatient basis for one or more reasonable periods of time, not to exceed 180 days each, if the court finds there is substantial probability that within the period of time to be ordered the defendant will attain competence or make substantial progress toward that goal.

(2) The Department of Mental Health or the treatment provider shall submit a written report to the court at any time it determines that the criteria for inpatient treatment set forth in subsection (a) of this section are met.

(May 24, 2005, D.C. Law 15-358, § 105, 52 DCR 2015; Sept. 26, 2012, D.C. Law 19-169, § 22(b), 59 DCR 5567.)

Section references. — This section is referenced in § 24-531.02, § 24-531.06, § 24-531.08, and § 24-531.09.

Effect of amendments. — The 2012 amendment by D.C. Law 19-169 substituted "DDS" for "MRDDA" twice in (a)(3).

Legislative history of Law 19-169. — See note to § 24-531.01.

Editor's notes. — Section 35 of D.C. Law 19-169 provided that no provision of the act shall impair any right or obligation existing under law.

§ 24-531.06. Court hearings during and after treatment.

Section references. — This section is referenced in § 24-531.04, § 24-531.05, § 24-531.07, and § 24-531.09.

CASE NOTES

Competency finding upheld.

Trial court did not violate the District of Columbia Incompetent Defendants Criminal Commitment Act of 2004 (Act), D.C. Code § 24-531.01 et seq., or the Due Process Clauses of the Fifth and Fourteenth Amendments, U.S.

Const. amends. V and XIV, in ruling that defendant was competent to stand trial where: (1) despite the initial evaluations of incompetency and defendant's deterioration during his stays at the jail, he evidently responded favorably to the inpatient treatment and medication provided at a hospital to help him attain competency; (2) having arranged for defendant to remain at the hospital instead of returning him to the jail, the judge had reason to believe defendant would maintain competency through the trial; (3) defendant and his counsel did not shoulder the burden of proving otherwise; and (4) while the Act stated that the court shall hold a hearing, the procedure could be modified with the parties' consent, and neither party objected so the court, without holding a hearing, could enter an order adjudicating defendant to be competent based upon the certification of the examining psychiatrist. Hargraves v. United States, 62 A.3d 107, 2013 D.C. App. LEXIS 69 (2013), writ of certiorari denied by 134 S. Ct. 277, 187 L. Ed. 2d 200, 2013 U.S. LEXIS 6454, 82 U.S.L.W. 3187 (U.S. 2013).

CHAPTER 8. INTERSTATE AGREEMENT ON DETAINERS.

§ 24-801. Enactment.

CASE NOTES

ANALYSIS

Dismissal of charges.
Time limitations.

Dismissal of charges.

After a dismissal with prejudice pursuant to the Interstate Agreement on Detainers (IAD) in the Superior Court of the District of Columbia, the same charges arising out of the same course of events may not be recharged by either prosecuting authority. Thus, after the United States Attorney's Office for the District of Columbia dismissed District of Columbia Code charges against defendant with prejudice pursuant to the IAD, the same charges arising out of the same course of events could not be recharged by the Office of Attorney General for the District of Columbia. Washington v. District of Columbia, 56 A.3d 1155, 2012 D.C. App. LEXIS 504 (2012).

Time limitations.

Time limitations set forth in the Interstate Agreement on Detainers apply to all District of Columbia Code charges on the basis of which a detainer has been lodged, regardless of which prosecuting authority ultimately brings those charges to trial. Washington v. District of Columbia, 56 A.3d 1155, 2012 D.C. App. LEXIS 504 (2012).

CHAPTER 9. YOUTH OFFENDER PROGRAMS.

Subchapter I. Youth Rehabilitation

Subchapter I. Youth Rehabilitation.

CHAPTER 13. RETURNING CITIZENS.

Subchapter 1. General

Subchapter II. Limited Liability for Employers Regarding Criminal History of Employees

Subchapter 1. General.

§ 24-1301. Definitions.

For the purposes of this chapter, the term:

(1) "Commission" means the Commission on Re-Entry and Returning Citizen Affairs established by § 24-1303(a).

(2) "Director" means the Executive Director of the Office on Returning Citizen Affairs.

(3) Repealed.

(4) "Office" means the Office on Returning Citizen Affairs established by § 24-1302(a).

(5) "Returning citizens" means persons who are residents of the District who were previously incarcerated.

(Mar. 8, 2007, D.C. Law 16-243, § 2, 54 DCR 605; Dec. 24, 2013, D.C. Law 20-61, § 3062(a), 60 DCR 12472.)

Effect of amendments. — The 2013 amendment by D.C. Law 20-61 substituted "Commission on Re-Entry and Returning Citizen Affairs" for "Commission on Re-entry and Ex-Offender Affairs" in (1); substituted "Office on Returning Citizens" for "Office on Ex-Offender Affairs" in (2) and (4); repealed (3); and added (5).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 3062(a) of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 3062(a) of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — Law 20-61, the "Fiscal Year 2014 Budget Support Act of 2013," was introduced in Council and assigned Bill No. 20-199. The Bill was adopted on first and second readings on May 22, 2013, and June 26, 2013, respectively. Signed by the Mayor on Aug. 28, 2013, it was assigned Act No. 20-157 and transmitted to Congress for its review. D.C. Law 20-61 became effective on Dec. 24, 2013.

Short title. — Section 3061 of D.C. Law 20-61 provided that Subtitle G of Title III of the act may be cited as the "Returning Citizens Renaming Emergency Amendment Act of 2013".

Editor's notes.

Because of the codification of D.C. Law 19-319 as subchapter II of this chapter. the preexisting text, consisting of §§ 24-1301 through 24-1304, was designated as subchapter I.

Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

§ 24-1302. Establishment of the Office on Returning Citizen Affairs.

(a) There is established the Office on Returning Citizen Affairs. The Office shall coordinate and monitor service delivery to returning citizens. The Office shall make recommendations to the Mayor to promote the general welfare, empowerment, and reintegration of returning citizens in the areas of employment and career development, health care, education, housing, and social services.

(b)(1) The Office shall be headed by an Executive Director, who shall be appointed by the Mayor with the advice and consent of the Council pursuant to § 1-523.01(a). The Director shall be a full-time employee, for whom annual

compensation shall be fixed in accordance with subchapter X-A of Chapter 6 of Title 1.

(2) The Director shall:

(A) Serve as principal advisor to the Mayor on matters related to the reintegration of returning citizens into the general population;

(B) Serve as an advocate for the returning citizens;

(C) Respond to recommendations and policy statements from the Commission;

(D) Identify areas for service improvement and policy development and implementation for presentation to the Mayor and the Commission by funding research, hosting symposia, and undertaking other projects;

(E) Coordinate efforts of District government agencies targeted toward returning citizens;

(F) Accept volunteer services and funding from public and private sources to supplement the budget in carrying out the duties and responsibilities of the Office;

(G) Apply for, receive, and expend any gift or grant to further the purposes of the Office;

(H) File an annual report on the operations of the Office with the Mayor and the Council; and

(I) Meet and coordinate with members of the Criminal Justice Coordinating Council, as set forth in § 22-4233(a), and their designates, to disseminate information and recommendations to and from the voting members of the Commission.

(3) The Office shall have staff as funded by appropriations and federal or private grants.

(Mar. 8, 2007, D.C. Law 16-243, § 3, 54 DCR 605; Jan. 19, 2012, D.C. Law 19-80, § 2(a), 58 DCR 8908; Dec. 24, 2013, D.C. Law 20-61, § 3062(b), 60 DCR 12472.)

Section references. — This section is referenced in § 24-1301.

Effect of amendments.

The 2013 amendment by D.C. Law 20-61 substituted "Office on Returning Citizens" for "Office on Ex-Offender Affairs" in the section heading and (a); and substituted "returning citizens" for "ex-offender" throughout the section.

Emergency legislation. — For temporary (90 days) amendment of this section, see § 3062(b) of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 3062(b) of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — See note to § 24-1031.

Short title. — Section 3061 of D.C. Law 20-61 provided that Subtitle G of Title III of the act may be cited as the "Returning Citizens Renaming Emergency Amendment Act of 2013".

Editor's notes. — Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

§ 24-1303. Establishment of the Commission on Re-Entry and Returning Citizen Affairs.

(a) There is established the Commission on Re-Entry and Returning Citizen

Affairs to advise the Mayor, the Council, and the Director on the process, issues, and consequences of the reintegration of returning citizens into the general population.

(b)(1) The Commission shall consist of 15 public voting members appointed by the Mayor with the advice and consent of the Council pursuant to § 1-523.01(a). There shall also be 13 ex-officio non-voting members, including the following officials or their designees:

(A) Attorney General;

(B) Director of the Department of Human Services;

(C) Director of the Department of Health;

(D) Director of the Department of Housing and Community Development;

(E) Director of the Department of Consumer and Regulatory Affairs;

(F) Superintendent of Education of the District of Columbia;

(G) President of the University of the District of Columbia;

(H) Chief of the Metropolitan Police Department;

(I) Director of the Department of Youth Rehabilitative Services;

(J) Director of the Department of Employment Services;

(K) Director of the Office of Human Rights;

(L) Director of the Department of Mental Health; and

(M) Director of the Addiction Prevention and Recovery Administration, or the administrative head of the agency or the successor agency within the Department of Health responsible for administering substance abuse prevention and treatment services.

(2) Ex-officio members or their designees shall develop and implement policies and programs in their respective agencies that will ensure that the purposes of this chapter are accomplished. Ex-officio members or their designees shall meet with the Director, at a minimum, once per quarter in planning and coordinating policies and programs to assist in the successful reintegration of returning citizens into the general population.

(3)(A) Voting members shall be appointed with due consideration for significant representation from the returning citizens community and established District-based public, private, nonprofit, and volunteer community organizations involved with the provision of services for returning citizens, the incarcerated, and their families.

(B) Voting members of the Commission shall serve terms of 3 years except, that of the initial members, 5 shall be appointed for a term of 3 years, 5 shall be appointed for a term of 2 years, and 5 shall be appointed for a term of one year. Members may be reappointed, but shall not serve more than 3 consecutive full terms. Terms for the initial Commission members shall begin on the date that a majority of the members are sworn in, which date shall become the anniversary date for all subsequent appointments.

(C) If a vacancy occurs on the Commission, the Mayor shall appoint, with the advice and consent of the Council, a successor to fill the unexpired portion of the term in accordance with § 1-523.01(a).

(4) The Mayor shall appoint the Chairperson of the Commission.

(5) All members of the Commission shall serve without compensation. Expenses incurred by the Commission or by its individual members, when

authorized by the Chairperson, shall become an obligation to the extent of appropriated District of Columbia and federal funds designated for that purpose.

(6) The Commission shall adopt rules of procedure.

(7) The Commission shall meet monthly. The meetings shall be held in space provided by the District government and shall be open to the public. A quorum to transact business shall consist of a majority, plus one, of the voting members.

(8) At least one of the 15 public voting members of the Commission shall be a member of a group, organization, or service provider that focuses on the needs of female returning citizens.

(c) The Commission shall:

(1) Serve as an advocate for returning citizens;

(2) Review and submit to the Mayor, the Council, and the Office an annual report that shall be submitted to the Mayor and the Council within 90 days after the end of each fiscal year, be the subject of a public hearing before the Council, and include:

(A) A summary of the recommendations of the Commission, including a summary of required monthly meetings pursuant to subsection (b)(7) of this section;

(B) A budget breakdown, with supporting budget documents, detailing the fiscal implications of the Commission's recommendations;

(C) Executive branch policy and legislative priorities of the Commission for the following fiscal year; and

(D) A summary of community outreach efforts undertaken by members of the Commission;

(3) Develop sustainable relationships and coordinate with federal, state and private agencies working with returning citizens;

(4) Participate in public hearings and promote community dialogue concerning the issues confronting returning citizens;

(5) Review and comment on proposed legislation and regulations, policies, and programs and make policy recommendations on issues affecting returning citizens;

(6) Develop policy and provide continuing review of the planning undertaken by the Office; and

(7) Make reasonable requests for information necessary to effectuate the discharge of its responsibilities.

(Mar. 8, 2007, D.C. Law 16-243, § 4, 54 DCR 605; Jan. 19, 2012, D.C. Law 19-80, § 2(b), 58 DCR 8908; Dec. 24, 2013, D.C. Law 20-61, § 3062(c), 60 DCR 12472.)

Section references. — This section is referenced in § 24-1301.

Effect of amendments.

The 2013 amendment by D.C. Law 20-61 substituted "Office on Returning Citizens" for "Office on Ex-Offender Affairs" in the section heading and (a); substituted "returning citizens" for "ex-offender" throughout the section; and deleted "and returning citizens" from the end of (b)(8).

Emergency legislation. — For temporary (90 days) amendment of this section, see § 3062(c) of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384, 20 DCSTAT 1827).

For temporary (90 days) amendment of this section, see § 3062(c) of the Fiscal Year 2014 Budget Support Congressional Review Emergency Act of 2013 (D.C. Act 20-204, October 17, 2013, 60 DCR 15341, 20 DCSTAT 2311).

Legislative history of Law 20-61. — See note to § 24-1031.

Short title. — Section 3061 of D.C. Law 20-61 provided that Subtitle G of Title III of the act may be cited as the "Returning Citizens Renaming Emergency Amendment Act of 2013".

Editor's notes. — Applicability of D.C. Law 20-61: Section 11001 of D.C. Law 20-61 provided that, except as otherwise provided, the act shall apply as of October 1, 2013.

§ 24-1304. Issuance of certificate of good standing.

(a) The Mayor is authorized to establish a program for the issuance of a certificate of good standing to any person previously convicted of a crime in the District of Columbia.

(b) A certificate of good standing shall include the following:

(1) Its date of issuance.

(2) The date the individual's last sentence, including parole, probation, or supervised release, was completed.

(3) Any outstanding and pending charges against the individual as of the date that the certificate of good standing is issued.

(4) Any outstanding and pending writs and holds placed on the individual as of the date that the certificate of good standing is issued.

(5) A statement that the information on the certificate of good standing reflects only the records, as of the date of issuance, in the database of the Department of Corrections and all other databases to which the department has access, and that the certificate is only a statement of the individual's status and shall not be construed as a statement of the individual's character.

(c) An individual may petition the Mayor for a certificate of good standing at any time after his or her completion of any and all sentences, including parole, probation, or supervised release.

(d) The District of Columbia shall not be liable for the actions of an individual to whom a certificate of good standing has been issued.

(e) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement this section.

(Mar. 8, 2007, D.C. Law 16-243, § 4a, as added June 15, 2013, D.C. Law 19-319, § 6, 60 DCR 2333.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-319 added this section.

Legislative history of Law 19-319. — Law 19-319, the "Re-entry Facilitation Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-889. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-657 and transmitted to Congress for its review. D.C. Law 19-319 became effective on June 15, 2013.

Subchapter II. Limited Liability for Employers Regarding Criminal History of Employees.

§ 24-1351. Limited liability.

Information regarding a criminal history record of an employee or a former

employee shall not be introduced as evidence in a civil action against an employer or its employees or agents if that information is based on the conduct of the employee or former employee, and if the employer has made a reasonable, good-faith determination that the following factors favored the hiring or retention of that applicant or employee:

(1) The specific duties and responsibilities of the position being sought or held;

(2) The bearing, if any, that an applicant's or employee's criminal background will have on the applicant's or employee's fitness or ability to perform one or more of the duties or responsibilities related to his or her employment;

(3) The time that has elapsed since the occurrence of the criminal offense;

(4) The age of the person at the time of the occurrence of the criminal offense;

(5) The frequency and seriousness of the criminal offense;

(6) Any information produced regarding the applicant's or employee's rehabilitation and good conduct since the occurrence of the criminal offense; and

(7) The public policy that it is generally beneficial for persons with criminal records to obtain employment.

(June 15, 2013, D.C. Law 19-319, § 2, 60 DCR 2333.)

Legislative history of Law 19-319. — Law 19-319, the "Re-entry Facilitation Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-889. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-657 and transmitted to Congress for its review. D.C. Law 19-319 became effective on June 15, 2013.